



# ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, October 13, 2017.

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[805 KAR 7:040](#). Training of newly employed miners. (Not Amended After Comments)

[805 KAR 7:050](#). Training of miners for new work assignments. (Not Amended After Comments)

[805 KAR 7:060](#). Program approval. (Not Amended After Comments)

**Sanctions and Penalties**

[805 KAR 8:030](#). Criteria for the imposition and enforcement of sanctions against certified miners. (Not Amended After Comments)

[805 KAR 8:040](#). Criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises. (Not Amended After Comments)

[805 KAR 8:050](#). Criteria for the imposition and enforcement of sanctions against noncertified personnel. (Not Amended After Comments)

**Division of Oil and Gas**

**Coal Bed Methane**

[805 KAR 9:041](#). Repeal of 805 KAR 9:040. (Not Amended After Comments)

**PUBLIC PROTECTION CABINET  
Department of Housing, Buildings and Construction  
Division of Plumbing, Boiler Section**

**Boilers and Pressure Vessels**

[815 KAR 15:010](#). Definitions for 815 KAR Chapter 15.

[815 KAR 15:025](#). New installations, general design, construction, and inspection criteria for boilers, pressure vessels, and pressure piping.

[815 KAR 15:026](#). Existing boilers and pressure vessels; testing, repairs, inspection, and safety factors.

[815 KAR 15:027](#). Fees and certificates for boiler and pressure vessel inspection.

[815 KAR 15:041](#). Repeal of 815 KAR 15:040, 815 KAR 15:051, and 815 KAR 15:060.

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**CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Health Benefit Exchange  
Office of Health Policy**

**State Health Plan**

[900 KAR 5:020](#). State Health Plan for facilities and services. (Amended After Comments)

**Kentucky Health Benefit Exchange**

[900 KAR 10:031](#). Repeal of 900 KAR 10:030 and 900 KAR 10:100.

**Division of Audits and Investigations**

**Controlled Substances**

[902 KAR 55:110](#). Monitoring system for prescription controlled substances. (Amended After Comments)

**Department for Public Health**

**Radon**

[902 KAR 95:040](#). Radon Contractor Certification Program. (Amended After Comments) (Deferred from September)

**Radiology**

[902 KAR 100:180](#). Technologically enhanced naturally occurring radioactive material related to oil and gas development. (Amended After Comments)

**Department for Medicaid Services  
Division of Policy and Operations**

**Medicaid Services**

[907 KAR 1:045](#). Reimbursement provisions and requirements regarding community mental health center services. (Amended After Comments)

[907 KAR 1:047](#). Community mental health center primary care services. (Amended After Comments)

[907 KAR 1:102](#). Advanced practice registered nurse services. (Deferred from September)

[907 KAR 1:104](#). Reimbursement for advanced practice registered nurse services. (Deferred from September)

[907 KAR 1:479](#). Durable medical equipment covered benefits and reimbursement. (Amended After Comments)

**Payment and Services**

[907 KAR 3:005](#). Coverage of physicians' services. (Amended After Comments)

[907 KAR 3:010](#). Reimbursement for physicians' services. (Amended After Comments)

**Department for Community Based Services  
Division of Protection and Permanency**

**Child Welfare**

[922 KAR 1:140 & E](#). Foster care and adoption permanency services. ("E" Expires 1-24-2018) (Amended After Comments)

[922 KAR 1:320](#). Service appeals. (Amended After Comments)

[922 KAR 1:330](#). Child protective services. (Amended After Comments)

[922 KAR 1:421](#). Repeal of 922 KAR 1:420. (Deferred from September)

[922 KAR 1:430](#). Child protective services in-home case planning and service delivery. (Amended After Comments)

[922 KAR 1:470](#). Central registry. (Amended After Comments)

[922 KAR 1:480](#). Appeal of child abuse and neglect investigative findings. (Amended After Comments)

[922 KAR 1:490 & E](#). Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements. ("E" Expires 1-24-2018) (Amended After Comments)

[922 KAR 1:550 & E](#). Operator's license for children in the custody of the cabinet. ("E" Expires 1/24/2017) (Amended After Comments)

**Adult Services**

[922 KAR 5:040](#). Standards for state-funded domestic violence shelters.

[922 KAR 5:090](#). General adult services.

[922 KAR 5:111](#). Repeal of 922 KAR 5:100 and 922 KAR 5:102.

**REMOVED FROM NOVEMBER**

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board**

**Board**

[16 KAR 1:015](#). Standards for certified teacher leader. (Comments Received; SOC due 10-13-2017) (Withdrawn; SOC not filed by deadline.)

**GENERAL GOVERNMENT CABINET  
Board of Pharmacy**

**Board**

[201 KAR 2:390 & E](#). Third-party logistics provider. ("E" expires 2-11-2018) (Comments Received; SOC ext. due 11-15-2017)

[201 KAR 2:400 & E](#). Outsourcing facility. ("E" expires 2-11-2018) (Comments Received; SOC ext. due 11-15-2017)

**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.



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EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY  
32 KAR 1:045E

This emergency administrative regulation is being promulgated in response to the changes to KRS Chapter 121 under Senate Bill 75, effective June 29, 2017, as passed by the 2017 Kentucky General Assembly during regular session and signed by the Governor on March 27, 2017. 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 prescribe official forms for the making of required reports under KRS 121.120(4)(a). This administrative regulation must be filed on an emergency basis to meet a deadline for an administrative regulation required by state law, specifically KRS 121.172(1), (8), and KRS 121.180(2)(b), (c). An ordinary administrative regulation would be insufficient because a state executive committee building fund is a new reporting entity under the campaign finance law. The reporting form for a state executive committee building fund account must be made available to ensure that state executive committees that desire to establish building fund accounts comply with the new law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The emergency administrative regulation is identical to the ordinary administrative regulation.

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

DEPARTMENT OF STATE  
Kentucky Registry of Election Finance  
(New Emergency Administrative Regulation)

32 KAR 1:045E. Election Finance Statement - State Executive Committee Building Fund.

RELATES TO KRS 121.172(8), 121.180(2)(b), (c)  
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4), 121.172(1)  
EFFECTIVE: September 29, 2017  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the authority 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 121.172(1) requires the Registry to promulgate administrative regulations to implement provisions permitting a state executive committee of a political party to establish a building fund account. KRS 121.172(8) requires a state executive committee to report all contributions to and expenditures from a building fund account to the Registry of Election Finance on a quarterly basis. KRS 121.180(2)(b) and (c) requires a state executive committee of a political party that has established a building fund account under KRS 121.172 to make full report to the Registry, to be received by the registry within five (5) days after the close of each calendar quarter. This administrative regulation establishes a single form for the reporting of finances by a state executive committee building fund account.

Section 1. Any state executive committee of a political party that establishes a building fund account under KRS 121.172 shall file the report required by KRS 121.180 on the form incorporated by reference in this administrative regulation.

Section 2. Incorporation by Reference. (1) The "State Executive Committee – Building Fund Election Finance Statement", reference KREF 006/E-BF, revised 09/2017, 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: September 27, 2017  
FILED WITH LRC: September 29, 2017 at 11 a.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 new administrative regulation – 32 KAR 1:045 - establishes a form for the reporting of the finances of a state executive committee building fund account in Kentucky. This administrative regulation is required by KRS 121.172(1) and (8), as established by 2017 Senate Bill 75, requiring a state executive committee of a political party to report all contributions to and expenditures from a building fund account to the Registry of Election Finance on a quarterly basis, under KRS 121.180(2)(b) and (c).
  - (b) The necessity of this administrative regulation: KRS 121.120(1)(g) requires the Registry to promulgate administrative regulations to carry out the provisions of KRS Chapter 121. KRS 121.172(1) requires the Registry to promulgate administrative regulations to implement KRS 121.172 relative to the establishment of a state political party building fund account.
  - (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 121.172(1), as it prescribes a form for the reporting of a state executive committee building fund account.
  - (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 121.172 and KRS 121.180 and specifically complies with the provisions of 2017 Senate Bill 75.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: Question does not apply, as this is a new administrative regulation.
  - (b) The necessity of the amendment to this administrative regulation: Question does not apply, as this is a new administrative regulation.
  - (c) How the amendment conforms to the content of the authorizing statutes: Question does not apply, as this is a new administrative regulation.
  - (d) How the amendment will assist in the effective administration of the statutes: Question does not apply, as this is a new administrative regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state executive committee of political parties that choose to establish a building fund account under KRS 121.172 will be affected by this administrative regulation.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: State executive committees of political parties that choose to establish a building fund account under KRS 121.172 shall report to the Registry on a quarterly basis all contributions to and expenditures from the building fund account as required by KRS 121.180.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will 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 finance of a state executive committee building fund account will be disclosed to the public, in compliance with KRS Chapter 121 and required by 2017 Senate Bill 75.

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

(a) Initially: Initial costs to administer the program are estimated to be less than \$10,000.

(b) On a continuing basis: Ordinary printing costs for forms are anticipated in the Registry's budget, as well as ordinary programming costs for resulting database changes.

(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 regulation apply equally to all state executive committees of political parties that choose to establish a building fund account.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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), (4), KRS 121.172(1), (8), 121.180(2)(b), (c)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Initial costs to administer this program are estimated to be less than \$10,000.

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

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

Revenues (+/-): None.

Expenditures (+/-): + less than \$10,000 in year 1

Other Explanation: N/A

STATEMENT OF EMERGENCY  
201 KAR 12:082E

During its 2017 regular session, the General Assembly passed House Bill 271, which amended provisions of the statutory scheme that regulates hairdressers and cosmetologists. See 2017 Ky. Acts ch. 99. Specifically, House Bill 271 amended KRS 317A.050(1) to reduce the total required hours of instruction from 1,800 to 1,500 for a cosmetology student to be eligible for an apprentice cosmetologist license. Additionally, it amended KRS 317A.090(3) to reduce the course curriculum requirement from 1,800 to 1,500 total hours for licensed cosmetology schools. Both changes align Kentucky with other states that similarly require 1,500 total hours of instruction for a cosmetologist license. House Bill 271 became effective on June 29, 2017. This emergency amendment is required to amend 201 KAR 12:082 to conform to KRS 317A.050(1) and KRS 317A.090(3), the recently amended statutes. See KRS 13A.190(1)(a)(3). 201 KAR 12:082 still requires an 1,800-hour curriculum for licensed schools of cosmetology despite the statutory reduction to 1,500 hours. Moreover, cosmetology schools in Kentucky have begun enrolling students into 1,500-hour programs based on the amended statute but without any modified curriculum in the corresponding administrative regulation. An emergency amendment to this administrative regulation will ensure that the regulatory scheme conforms to the current statute. It will also avoid licensed cosmetology schools jeopardizing their accreditation due to noncompliance with the current regulatory requirement and will provide certainty to all licensed cosmetology schools and prospective students. This emergency amendment to the administrative regulation shall be replaced by an ordinary amendment to be concurrently filed with the Regulations Compiler. The ordinary amendment is not identical to this emergency amendment. In addition to the reduction in instructional hours, the ordinary amendment also updates other aspects of course curriculum and eliminates unnecessary and duplicative language in the existing administrative regulation. These matters fall outside the scope of an emergency amendment.

MATTHEW G. BEVIN, Governor  
R. KAY SWANNER, Chair

GENERAL GOVERNMENT CABINET  
Kentucky Board of Hairdressers and Cosmetologists  
(Emergency Amendment)

201 KAR 12:082E. School's course of instruction.

RELATES TO: KRS 317.050[~~(8)~~], 317A.090  
STATUTORY AUTHORITY: KRS 317A.060[~~(4)~~], 317A.090  
EFFECTIVE: October 13, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(2)(e)[~~(4)~~] requires the board to promulgate administrative regulations governing the hours and courses of instruction at schools of cosmetology[~~including their hours and courses of instruction~~]. KRS 317A.090 establishes the requirements for schools of cosmetology. This administrative regulation establishes requirements for the hours and courses of instruction of schools of cosmetology.

Section 1. The regular courses of instruction for cosmetology students shall contain courses relating to the four (4) subject areas identified in this section. (1) The first area of courses shall relate to professional practices, which shall include:

- (a) The cosmetology profession:
  - 1. Cosmetology vocabulary;
  - 2. Brief history: how it began, and changes; and
  - 3. Ethics: ethics in a beauty salon; and salon conduct;
- (b) Salon procedures:
  - 1. Hygiene and good grooming:
    - a. Personal and public;
    - b. Personal characteristics; and
    - c. Responsibilities of a cosmetologist;

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2. Professional attitudes and salesmanship:
  - a. Personality development;
  - b. Salesmanship and business management;
  - c. Customer relationship; and
  - d. Telephone personality;
3. Public relations and psychology:
  - a. Behavior; and
  - b. Proper image; and
- (c) Specialty services:
  1. Facial treatments and make-up:
    - a. Facial treatment/make-up preparation;
    - b. Implements and supplies;
    - c. Procedure in giving a plain facial;
    - d. Purpose and effect of massage movements;
    - e. Facial cosmetics;
    - f. Special problems;
    - g. Eyebrow arching; and
    - h. Lash and brow dye and enhancements;
  2. Nail technology:
    - a. Purpose and effect;
    - b. Preparation;
    - c. Equipment; and
    - d. Procedures, including the following:
      - (i) Plain manicure;
      - (ii) Oil manicure;
      - (iii) Removal of stains;
      - (iv) Repair work;
      - (v) Hand and arm massage;
      - (vi) Buffing;
      - (vii) Application of lacquer; and
      - (viii) Application of artificial nails.
- (2) The second area of courses shall relate to life sciences (general anatomy), which shall include:
  - (a) Osteology:
    1. Definition; and
    2. Functions;
  - (b) Myology:
    1. Definition;
    2. Functions; and
    3. Types;
  - (c) Neurology:
    1. Definition;
    2. Functions;
    3. Types (motor and sensory); and
    4. Principal nerves of the head, face and neck;
  - (d) Angiology:
    1. Definition;
    2. Composition of blood; and
    3. Function of blood;
  - (e) Dermatology:
    1. Structure of skin;
    2. Functions of skin;
    3. Appendages of skin;
    4. Conditions of the skin; and
    5. Lesions of the skin;
  - (f) Trichology:
    1. Structure of hair;
    2. Composition;
    3. Blood and nerve supply;
    4. Growth and regeneration;
    5. Color;
    6. Texture;
    7. Elasticity;
    8. Porosity; and
    9. Conditions to be recognized;
  - (g) Nails:
    1. Structure and composition;
    2. Growth and regeneration; and
    3. Irregularities.
- (3) The third area of courses shall relate to physical sciences (chemistry and treatment), which shall include:
  - (a) Chemistry:
    1. Elements, compounds, and mixtures:
      - a. Properties of;
      - b. Acid and alkali; and
      - c. Chemistry of water'
    2. Composition and uses of cosmetics:
      - a. For the body;
      - b. For the skin and face; and
      - c. For the scalp and hair;
    3. Chemistry of hair lightening;
    4. Chemistry of hair coloring;
    5. Chemical hair relaxing;
    6. Chemistry of make-up;
    7. Chemistry of facial treatments;
    8. Chemistry of rinses:
      - a. Soaps and shampoos; and
      - b. Detergents; and
    9. Chemistry of cold waving;
    - (b) Scalp and hair treatments:
      1. Purpose and effects;
      2. Preparation and procedure;
      3. Use of cap;
      4. Electricity and therapeutic ray; and
      5. Safety rules;
    - (c) Shampoos and rinses:
      1. Importance of good shampoo;
      2. Purpose of effects;
      3. Required materials and implements;
      4. Brushing and drying;
      5. Types of shampoos;
      6. Rinses (not colored); and
      7. Composition;
    - (d) Hair coloring:
      1. Principal reasons for coloring;
      2. Advantages of coloring;
      3. Classifications of hair coloring;
      4. Variation of products;
      5. Procedures; and
      6. Safety measures;
    - (e) Hair lightening:
      1. Types of lighteners;
      2. Implements and supplies;
      3. Procedure;
      4. Special problems in hair lightening;
      5. Fillers and toners;
      6. Removal of aniline derivative tints; and
      7. Tint back to natural coloring;
    - (f) Cold waving:
      1. Basic requirements;
      2. Scalp and hair analysis;
      3. Hair porosity;
      4. Hair texture;
      5. Hair elasticity;
      6. Hair density;
      7. Curling rods and chemicals;
      8. Variation of permanent wave products;
      9. Procedures;
      10. Problems; and
      11. Safety measures; and
    - (g) Sterilization and sanitation:
      1. Definitions;
      2. Importance;
      3. Sterilization rules; and
      4. Methods of sterilization.
  - (4) The fourth area of courses shall relate to hair designing or sculpturing, which shall include:
    - (a) Hair shaping:
      1. Fundamentals of hair shaping;
      2. Correct use of tools;
      3. Designing and planning the hair cut;
      4. Sectioning and thinning;
      5. Razor and shear shaping;
      6. Wig shaping; and
      7. Safety precautions;
    - (b) Hair styling:

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1. Finger waving;
  2. Pin curls;
  3. Hair partings;
  4. Artistry hair styling;
  5. Dressing of the coiffure;
  6. Special consideration in hair styling;
  7. Chemical hair relaxing and styling;
  8. Facial types; and
  9. Hair pressing and types of hot-iron curling; and
- (c) Care and styling of wigs:
1. Purpose;
  2. Quality;
  3. Types of wigs;
  4. Ordering wigs;
  5. Cleaning;
  6. Shaping;
  7. Tinting and color rinsing;
  8. Setting; and
  9. Safety precautions.

Section 2. A school shall teach the students about the various supplies and equipment used in the usual salon practices.

Section 3. A school shall have the following charts or visual aids available for students' use:

- (1) Charts or visual aids showing anatomy of muscles of face and neck with special reference to the direction of muscle fibers and function of muscle or groups of muscles; and
- (2) Charts or visual aids showing anatomy of nails.

Section 4. A student shall receive not less than 1,500~~[1,800]~~ hours in clinical class work and scientific lectures with:

- (1) A minimum of 375~~[450 minimum lecture]~~ hours for science and theory;
- (2) A minimum of 1,085~~[1,305 minimum]~~ clinic and practice hours; and
- (3) A minimum of forty (40)~~[Forty-five (45)]~~ hours on the subject of applicable Kentucky statutes and administrative regulations.

Section 5. 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 the administrative regulations of the board.

Section 6. A school of cosmetology shall maintain and teach the curriculum established in this section. (1) The curriculum for freshmen students shall be:

- (a) Theory and related theory class, seventy five (75)~~[400]~~ hours, which shall include:
  1. General theory, including Kentucky cosmetology law and applicable administrative regulations promulgated thereunder;
  2. Clinical theory; and
  3. Lecturing theory; and
- (b) Clinical and related theory class (freshman practice class on students or mannequins), 175~~[200]~~ hours, which shall include:
  1. Cold waves;
  2. Facials and make-up;
  3. Complete "S" formations or complete finger waves;
  4. Pin curl technique;
  5. Hair shaping;
  6. Hair styling techniques;
  7. Lash and brow tint and enhancements;
  8. Eyebrow arches;
  9. Nail technology;
  10. Scalp treatments;
  11. Shampooing;
  12. Hair coloring, bleaching, and rinsing (mixing and formulas);
  13. Heat permanent;
  14. Safety measures.

(2) The curriculum for junior and senior students shall be:

- (a) Theory and related theory class, 250~~[500]~~ hours, including:
  1. Professional practices;
  2. Life sciences (general anatomy);
  3. Physical sciences (chemistry and treatment);

4. Hair designing safety measures; and
  5. Kentucky cosmetology laws and applicable administrative regulations; and
- (b) Clinical class, 1,000 hours, including:
1. Hair conditioning treatments;
  2. Scalp treatments;
  3. Hair shaping;
  4. Shampoos;
  5. Cold waves;
  6. Chemical hair relaxing (permanent wave);
  7. Complete "S" formation and complete finger waves;
  8. Pin curl techniques;
  9. Hair styles;
  10. Iron curling;
  11. Hair coloring and toning;
  12. Bleaches and frostings;
  13. Facials and make-up;
  14. Nail technology;
  15. Lash and brow tints and enhancements;
  16. Eyebrow arches;
  17. Color rinses (certified color);
  18. Wiggery;
  19. Professional ethics and good grooming;
  20. Salesmanship;
  21. Reception desk and telephone answering;
  22. Recordkeeping;
  23. Dispensary (procedures for ordering supplies and retail merchandise);
  24. Personality development;
  25. Salon management; and
  26. Public relations.

Section 7. In addition to the regular course of instruction, a cosmetology school may have two (2) related lectures and demonstrations per month.

Section 8. Time not utilized in theory or clinic work shall be used for study periods or library work.

Section 9. A school shall furnish students text books that:

- (1) Have been approved by the board; and
- (2) Are in paper or electronic format.

Section 10. A student of cosmetology shall not be permitted to work on the public until the student has completed 250 ~~[300]~~ hours of instruction.

Section 11. A student of cosmetology shall be allowed a total of sixteen (16) hours for out-of-school activities pertaining to the profession of cosmetology per 1,500~~[1,800]~~ hours, not to exceed eight (8) hours per day, if it is reported within ten (10) days of the field trip or education show to the board office on the "Certification of Cosmetology Field Trip<sup>[±]</sup> Hours" form, or "Certification of Cosmetology Student Education Show<sup>[±]</sup> Hours" form, as appropriate.

Section 12. A student of cosmetology shall be allowed a total of sixteen (16) hours for attending educational programs per 1,500 ~~[1,800]~~ hours, not to exceed eight (8) hours per day, if it is reported within ten (10) days of the field trip or education show to the board office on the "Certification of Cosmetology Field Trip Hours" form, or "Certification of Cosmetology Student Education Show Hours" form, as appropriate.

Section 13. A copy of the Kentucky State Board of Hairdressers and Cosmetologists' statutes and administrative regulations shall be made available to all students.

Section 14. The nail technician curriculum shall include the following:

- (1) Science and theory, 200 hours, which shall include:
  - (a) 1. Equipment;
  2. Sterilization;

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3. Sanitation;
4. Chemistry and types of artificial nails;
5. Public and personal hygiene safety measures; and
6. Statutes and administrative regulations governing cosmetology and nail technology;

- (b) Nail condition and manicure techniques;
- (c) Hand and arm massage;
- (d) Science pertaining to areas of hands and arms;

(e) 1. Personality;

2. Grooming;

3. Salon management;

4. Professional ethics; and

5. Cosmetic theory laws;

(f) Nails:

1. Structure and composition;

2. Growth and regeneration; and

3. Irregularities; and

(2) Clinical, 400 hours, which shall include:

(a) Oil and plain manicure;

(b) Nail polish changes:

1. Nail polish changes;

2. Moons;

3. Half-moons; and

4. Tips;

(c) Hand and arm massage;

(d) Safety measures;

(e) Care of equipment;

(f) Removal of stains;

(g) Repair work including wraps and tips;

(h) Buffing;

(i) Application of lacquer; and

(j) Application of artificial nails.

Section 15. The course of study and curriculum for an apprentice instructor shall include as a minimum, for a total of 1,000 hours, the following:

(1) Orientation, fifteen (15) hours;

(2) Psychology of student training, fifty (50) hours;

(3) Introduction to teaching, thirty (30) hours;

(4) Good grooming and personality development, fifty (50) hours;

(5) Course outlining and development, forty (40) hours;

(6) Lesson planning, forty-five (45) hours;

(7) Teaching techniques (methods), eighty (80) hours;

(8) Teaching aids, audio-visual techniques, eighty (80) hours;

(9) Demonstration techniques, fifty-five (55) hours;

(10) Examinations and analysis, sixty (60) hours;

(11) Classroom management, forty-five (45) hours;

(12) Recordkeeping, twenty-five (25) hours;

(13) Teaching observation, sixty-five (65) hours;

(14) Teacher assistant, ninety (90) hours; and

(15) Pupil teaching (practice teaching), 270 hours.

Section 16. 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 17. All records of apprentice instructors' hours earned shall be recorded on the Monthly Attendance Report form supplied by the board office on or before the tenth day of each month.

Section 18. The board may permit an individual to enroll in a school for a special brush-up course in any of the following subjects:[:]

(1) Permanent waving, and all chemical control;

(2) Nail technology, hand and arm massage, and application of artificial nails;

(3) All iron curls;

(4) Facials;

(5) Hair coloring and bleaching;

(6) Scalp massage;

(7) Hair shaping, trimming, and thinning;

(8) Science; or

(9) Hair dressing and styling.

Section 19. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certification Of Cosmetology Field Trip[\*] Hours", 2003;

(b) "Certification Of Cosmetology Student Education Show[\*] Hours", 2003; and

(c) The "Monthly Attendance Report" Form, 2003.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 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: October 12, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

CONTACT PERSON: Julie M. Campbell, Board Administrator, 111 St. James Ct., Ste A., Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481, email [julie.campbell@ky.gov](mailto:julie.campbell@ky.gov)

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions required by students and faculty for schools of cosmetology.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to guarantee a standardization of education for licensed cosmetology schools that complies with state statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317A.060 requires the board to promulgate administrative regulations setting the hours and course of instruction for cosmetology schools. This administrative regulation must be amended to comply with recent statutory amendments to KRS 317A.050 and 317A.090 reducing the curriculum requirements for cosmetology schools from 1,800 to 1,500 instructional hours.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation outlines and defines education standards and the number and content of course hours required to meet the education standards necessary for licensing exams in the Commonwealth by the Kentucky Board of Hairdressers and Cosmetologists. The General Assembly has determined that Kentucky now requires a minimum of 1,500 instructional hours for licensing as an apprentice cosmetologist. This amendment implements that reduction into the course curriculum of licensed cosmetology schools.

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

(a) How the amendment will change this existing administrative regulation: The amendment will reduce the current curriculum from 1,800 to 1,500 hours to comport with the recent amendments to KRS 317A.050 and 317A.090.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to comply with House Bill 271, which amended KRS 317A.050 and 317A.090. KRS 317A.060(2)(e) requires the Board to promulgate administrative regulations addressing the hours and courses of instruction at cosmetology schools. This amendment will conform the regulation to the statutory amendment reducing the curriculum to 1,500 hours, which has been effective since June 29, 2017.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides curriculum guidelines for education based on the current statutory requirement of 1,500 hours of instruction.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a

regulatory scheme for licensed cosmetology schools that is consistent with the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 62 licensed cosmetology schools and approximately 10,000 students affected by this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed cosmetology schools have already begun enrolling students into program using a 1,500-hour curriculum. However, this amendment is necessary to ensure that licensed schools are provided the necessary regulatory guidance and may maintain their current accreditation by national associations. Schools will provide students a course curriculum that is consistent with the statutes and 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 anticipated cost to licensed schools because of this amendment. Schools have already shifted their course curriculum to 1,500-hour program to comply with the statute.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed schools will be able to continue enrolling students into program based upon the statutory 1,500-hour curriculum requirement. Kentucky's regulatory scheme for cosmetologist licenses will fully comply with its authorizing statutes, and be more closely aligned with similar licensing schemes of other states.

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

(a) Initially: No additional funds are necessary initially to implement this administrative regulation.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current funding will not change.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created or increased directly or indirectly by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply to all cosmetology schools and students.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Hairdressers and Cosmetologists.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.060, KRS 317A.090, and KRS 317B.020.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional funds will be raised.

(c) How much will it cost to administer this program for the first year? No additional cost.

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

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

#### STATEMENT OF EMERGENCY 921 KAR 2:040E

In accordance with KRS 13A.190(1)(a) 2 and 3, this emergency administrative regulation is necessary to ensure timely compliance with the Pub. L. 113-186, Child Care and Development Grant Act of 2014, the associated federal rule, and related technologies' deployment in effort to avoid costly federal corrective action or federal financial penalty. The emergency administrative regulation also reduces potential threats to public health and welfare through improved access to a full array of work supports for qualified low-income households with children. An ordinary administrative regulation would not allow the agency sufficient time to align policy with technology, practice, and federal mandate in effort to avoid federal corrective action or financial penalty and to integrate public assistance programs. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation. The ordinary administrative regulation includes revision to support forthcoming practice changes in 2018 improving programs' alignment and program integrity.

MATTHEW G. BEVIN, Governor  
VICKIE YATES BROWN GLISSON, Secretary

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

**921 KAR 2:040E. Procedures for determining initial and continuing eligibility.**

RELATES TO: KRS 205.010, 205.200, 205.245, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)

EFFECTIVE: September 29, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate 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 Chapter 205 requires the Cabinet for Health and Family Services to administer the Kentucky Transitional Assistance Program (K-TAP) and the State Supplementation Program (SSP). KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with Title IV-A of the Social Security Act, 42 U.S.C. 601-619, and federal regulations. This administrative regulation establishes the procedures used to determine initial and continuing eligibility for assistance under these programs.

Section 1. Eligibility Determination Process. (1) A household shall, for the month payment is intended to cover the household, meet the eligibility criteria in:

(a) 921 KAR 2:006 and 921 KAR 2:016 for K-TAP; or

- (b) 921 KAR 2:015 for SSP.
- (2) A household shall not receive assistance until approval of the application for benefits.
- (3) Each decision regarding eligibility for assistance shall be supported by facts recorded in the applicant's or recipient's case record.
- (4) The applicant or recipient shall be the primary source of information and shall be required to:
  - (a) Furnish verification of:
    1. Income;
    2. Resources; and
    3. Technical eligibility; and
  - (b) Give written consent to contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.
- (5) If informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information when requested shall be considered a failure to present adequate proof of eligibility.
- (6)(a) An application shall be considered filed if a PA-77, Intent to Apply for ~~Medicaid and/or~~ K-TAP ~~[(Cash Assistance)], Medicaid, State Supplementation, or Child Care Assistance,~~ or a PA-100, Application/Recertification for K-TAP ~~and~~ Kinship Care ~~and Family/AFDC Related MA~~, containing the name, address, and signature of the applicant is received by ~~an~~ a DCBS office of the Department for Community Based Services (DCBS).
  - (b) An application shall be processed after the:
    1. Applicant or representative is interviewed;
    2. Required information and verification for the application is provided to the ~~Department for Community Based Services~~ {DCBS} office; and
    3. Application and related documents, pursuant to subsection (4) of this section, are received by the DCBS office.
  - (c) If an electronic form is not used, the cabinet shall record information for recertification to determine continuing eligibility for K-TAP by using form PA-100.

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting, within ten (10) calendar days, any change in circumstances ~~that~~ which may affect eligibility or the amount of payment.

(2) Eligibility shall be redetermined:

- (a) If a report is received or information is obtained about ~~a change~~ changes in ~~a circumstance~~ circumstances;
- (b) Every twenty-four (24) months for SSP cases; and
- (c) Every twelve (12) months for K-TAP cases.

Section 3. Child Care Assistance Program. Procedures used to determine initial and continued eligibility for the Child Care Assistance Program shall be in accordance with 922 KAR 2:160.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "PA-77, Intent to Apply for ~~Medicaid and/or~~ K-TAP, Medicaid, State Supplementation, or Child Care Assistance ~~(Cash Assistance)~~", 10/17[14/14]; and
- (b) "PA-100, Application/Recertification for K-TAP ~~and~~ Kinship Care ~~and Family/AFDC Related MA~~", 10/17[14/13].

(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.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 19, 2017

FILED WITH LRC: September 29, 2017 at 11 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used to determine initial and continuing eligibility for assistance under the Kentucky Transitional Assistance Program (K-TAP) and State Supplementation Program (SSP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish eligibility procedures for assistance under K-TAP and SSP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of eligibility procedures for assistance under K-TAP and SSP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing K-TAP and SSP eligibility procedures.

(2) If 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 updates incorporated materials and adds a clarifying cross-reference to the administrative regulation governing the Child Care Assistance Program. In addition, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to support the integration of multiple public assistance programs on behalf of, with the Child Care Assistance Program effective October 1, 2017.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its refinement of eligibility procedures to improve qualified households access to an improved array of public assistance programs supporting work and the households' overall welfare. In addition, the administrative regulation enhances program integrity, supports conformity with federal requirements, and preserves the state's federal funding awards for public assistance programming.

(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 alignment with programmatic improvements to the eligibility procedures of the department improving access to qualified households, agency efficiencies, and programs' integrity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: At the end of June 2017, there were 17,344 families including 31,019 children receiving K-TAP, and there were 2,309 individuals receiving SSP.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new or additional action required on the part of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new or additional cost borne by the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the efficiencies of an integrated eligibility and enrollment system for multiple public assistance programs. The integrated system will assure that regulated entities have improved access to the programs for which they qualify and experience improved

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accuracies in the eligibility determination process reducing the possibility for fraud, error, or claim.

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

(a) Initially: The enhancement of the eligibility and enrollment system will be made within existing appropriations. This administrative regulation will support programmatic improvements to help the agency comply with federal requirements and avoid federal corrective action or penalty.

(b) On a continuing basis: There is no new or additional ongoing costs anticipated as a result of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is supported through the Temporary Assistance for Needy Families Block Grant (TANF), state maintenance of effort, and General Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation will require 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. 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. 601-619

2. State compliance standards. KRS 194A.050(1), 205.200(2)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619

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 is 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), 205.200(2), 42 U.S.C. 601-619

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for 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 generate no revenue for

state or local government.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is not projected to impose new or additional costs.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is not projected to impose new or 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:

STATEMENT OF EMERGENCY
921 KAR 3:090E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)1-3 to adjust the monthly benefit amounts for the Simplified Assistance for the Elderly Program (SAFE). SAFE is a demonstration project approved by the United States Department of Agriculture, Food and Nutrition Service (FNS). It is designed to improve access and delivery of benefits and increase participation of elderly Supplemental Security Income (SSI) recipients in the Supplemental Nutrition Assistance Program (SNAP), the food benefit program for low-income households. SAFE must be cost neutral in relation to the regular SNAP. During the most recent evaluation of the project, SAFE was found to no longer be cost neutral. Adjustments in the low-shelter benefits amounts, a slight increase, are necessary to comply with federal mandates governing the demonstration project, avoid detrimental financial consequences for the state administering agency or federal discontinuation of SAFE, and to continue meeting the health and welfare needs of the elderly and disabled served through SAFE. An ordinary administrative regulation would not allow the agency to meet the federally negotiated implementation date of October 1, 2017. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
VICKIE YATES BROWN GLISSON, Secretary

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

921 KAR 3:090E. Simplified assistance for the elderly program or "SAFE".

RELATES TO: 7 C.F.R. 273.1, 273.2, 273.9, 273.10, 273.12, 273.14

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4

EFFECTIVE: September 29, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate 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. 7 C.F.R. 271.4 delegates the administration of the Supplemental Nutrition Assistance Program (SNAP) to the state agency. This administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program (SAFE), a demonstration project administered by the cabinet to improve access to SNAP for elderly and disabled individuals.

Section 1. Definitions. (1) "Regular SNAP benefits" means SNAP benefits received in accordance with the procedures



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specified in:

- (a) 921 KAR 3:020, Financial Requirements;
- (b) 921 KAR 3:025, Technical Requirements;
- (c) 921 KAR 3:030, Application Process; and
- (d) 921 KAR 3:035, Certification Process.

(2) "Shelter costs" means monthly rent or mortgage expenses as stated by the applicant.

(3) "Simplified Assistance for the Elderly" or "SAFE" means an optional SNAP program for SSI participants who are age sixty (60) or older.

(4) "State Data Exchange" or "SDX" means files administered by the Social Security Administration that provide states with eligibility and demographic data relating to SSI applicants and participants.

Section 2. SAFE Program Procedures. Unless a different procedure or process for a SNAP requirement is specified in this administrative regulation, all SNAP requirements specified in 921 KAR Chapter 3 shall apply to SAFE, including the process for:

- (1) A fair hearing;
- (2) An administrative disqualification hearing;
- (3) An appeal;
- (4) A disqualification;
- (5) A claim and collection of a claim; and
- (6) EBT issuance.

Section 3. Eligibility for SAFE. (1) An individual may qualify for SAFE benefits if the individual:

- (a) Is a Kentucky resident;
- (b) Is:
  - 1. A current SSI recipient; or
  - 2. SSI eligible, but SSI benefits are currently suspended;
- (c) Is age sixty (60) or older;
- (d) Is not institutionalized;
- (e) Is:
  - 1. Single, widowed, divorced, or separated; or
  - 2. Married and living with a spouse who meets the criteria specified in (a) through (d) and (f) of this subsection; and
- (f) Purchases and prepares food separately from another individual who shares the same residence, but is not a member of the applicant's household as defined by 921 KAR 3:010.

(2) The cabinet shall use SDX to verify an applicant's marital and institutional status.

(3) If a household member does not meet the criteria listed in subsection (1) of this section, the household:

- (a) Shall not be eligible for SAFE; and
- (b) May apply for regular SNAP benefits in accordance in 921 KAR 3:030.

(4) An individual who meets the criteria of subsection (1) of this section may apply for regular SNAP benefits instead of SAFE benefits.

(5) An individual shall not receive SAFE benefits and regular SNAP benefits at the same time.

Section 4. SAFE Application Process. (1) Through use of the SDX files, the cabinet shall:

(a) Identify SSI participants who are potentially eligible for SAFE; and

- (b) Mail each identified SSI household:
  - 1. ~~An [a- A] SF-1, Simplified Assistance for the Elderly (SAFE) Application [7/15; or~~

~~b. On or after December 28, 2015, a SF-1, 12/15]; and~~

- 2. A return envelope.
- (2) A SAFE application shall be considered filed if the SF-1 is:
  - (a) Signed; and
  - (b) Received at the Department for Community Based Services, Division of Family Support.

(3) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) calendar days of the date the application is filed.

Section 5. SAFE Certification Process. (1) The cabinet shall process a SAFE application without requiring an interview.

(2) Information necessary to certify a SAFE application shall be obtained from SDX with the exception of the information provided by the applicant on the SF-1 or the SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form.

(3) The cabinet shall certify an eligible household for SAFE benefits for up to thirty-six (36) months.

(4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice upon certification or denial.

(5) In the month preceding the last month of the household's certification period, the cabinet shall send a SAFE household an:

- ~~(a) A] SF-2 [7/14; or~~
- ~~(b) On or after December 28, 2015, a SF-2, 12/15].~~

Section 6. SAFE Benefits. (1) The cabinet shall provide a SAFE household a standard monthly benefit amount approved by the U.S. Department of Agriculture's Food and Nutrition Service and listed in the SF-1.

(2) The standard SAFE benefit amounts shall be based on:

- (a) Shelter costs;
- (b) Household size; and
- (c) The average benefits received by a similar household in the regular SNAP.

Section 7. Changes in Household Circumstances. (1) A household receiving SAFE benefits shall not be required to report any changes during the certification period.

(2) The cabinet shall process changes in household circumstances based on information received from SDX.

(3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet shall not act upon the information unless the information is a change in a household member's:

- (a) Name;
- (b) Date of birth; or
- (c) Address.

(4) Unless a change in household circumstance results in a change in benefits, the cabinet shall not provide a SAFE household with notification of a change being made in household circumstances.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

~~(a) [ "SF-1, Simplified Assistance for the Elderly (SAFE) Application", 7/15;~~

~~(b) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", 10/17 [12/15;~~

~~(c) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", 11/14]; and~~

~~(d) [ (d) ] "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", 10/17 [12/15].~~

(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.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 19, 2017

FILED WITH LRC: September 29, 2017 at 11 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program (SAFE), a demonstration project administered by the cabinet to improve

access to the Supplemental Nutrition Assistance Program (SNAP) for elderly and disabled individuals.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish technical eligibility requirements for individuals participating in SAFE.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of requirements for SAFE, a demonstration project administered by the cabinet to improve access to SNAP for elderly and disabled 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 through its establishment of eligibility requirements for SAFE used by the cabinet.

(2) If 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 facilitate increasing the low-shelter benefit for one-person households from \$30 to \$33 and the low-shelter benefit for two-person households from \$77 to \$82, consistent with the findings from the most recent federal evaluation of the project. The amendment also updates incorporated materials and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is required by U.S. Department of Agriculture-Food Nutrition Service in order to maintain cost neutrality of the demonstration project. Without the amendment, Kentucky risks losing SAFE through federal withdrawal or disallowance of the demonstration project eliminating improved access to SNAP for elderly and disabled individuals.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its adjustment of SAFE benefit amounts consistent with the latest federal evaluation of the project ensuring cost neutrality in relation to regular SNAP, a condition of the demonstration project's approval and continuation.

(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 conformity with federal requirements of the demonstration project, thereby supporting SAFE's continuation to improve SNAP access for elderly and disabled individuals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of August 9, 2017, there are 10,500 SAFE cases, including 11,223 individuals. Of those, 6,537 individuals in one- and two-person households will realize the increase in the low-shelter benefits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new or additional action required on the part of SAFE applicants and recipients.

(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 regulated entities associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will change the allotment for Simplified Assistance for the Elderly Program or "SAFE" households. The low-shelter benefit for 1-person households will increase from \$30 to \$33, and the low-shelter benefit for 2-person households will increase from \$77 to \$82.

(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 technical in nature and is not projected to result in an increase in state costs. This amendment will help maintain cost neutrality in SAFE, a condition of the demonstration project's federal approval.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to affect state costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SAFE benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.2

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

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.2

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 imposes no 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 imposes no 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), 7 C.F.R. 271.4, 273.2

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no 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? This administrative regulation will generate no revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation will not require any additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not require any additional costs in subsequent years.

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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
922 KAR 2:160E

In accordance with KRS 13A.190(1)(a) 2 and 3, this emergency administrative regulation is necessary to ensure timely compliance with the Pub. L. 113-186, Child Care and Development Grant Act of 2014, the associated federal rule, and related technologies' deployment in effort to avoid costly federal corrective action or federal financial penalty.

MATTHEW G. BEVIN, Governor
VICKIE YATES BROWN GLISSON, Secretary

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

922 KAR 2:160E. Child Care Assistance Program.

RELATES TO: KRS 194A.060, 199.892, 199.894(1), (5), 199.896, 199.898(1), (2), 199.8982, 199.899, 199.8994, 214.036, 314.011(5), 337.275, 600.020[(50)], 605.120(5), 620.020(10), [2014 Ky. Acts ch. 117, Part 1, G.9(3),] 2016 Ky. Acts ch. 149, Part 1, G.9(7), 7 C.F.R. 1463, 20 C.F.R. 676-678, 34 C.F.R. 361, 463[652, 660-674], 45 C.F.R. 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 7 U.S.C. 2012, 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723(a)(5), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1395w-141, 1771-1793, 2000d, 3001, 4950-5085, 8621, 9902(2), 9857-9858q, 10602(c)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

EFFECTIVE: September 29, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

- (2) "Cabinet" is defined by KRS 199.894(1).
(3) "Change in a circumstance" means a change that may affect[affects] eligibility or benefit amounts, such as:
(a) Beginning or ending employment;
(b) Change in an employer or obtaining additional employment;
(c) Increase or decrease in the number of work hours;
(d) Increase or decrease in the rate of pay;
(e) Increase or decrease in family members;
(f) Change in self-employment activity;
(g) Change in scheduled hours care is needed;
(h) Beginning or ending an educational activity;
(i) Change in child care provider;
(j) Change in address or residence;
(k) Change in marital status; or
(l) Beginning or ending receipt of unearned income.
(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.
(5) "Child Care and Development Fund" or "CCDF" is defined by 45 C.F.R. 98.2.
(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.
(7) "Child care certificate" is defined by 45 C.F.R. 98.2.
(8) "Child protective services" is defined by [in] 922 KAR 1:330, Section 1(4)[4(3)].
(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.
(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.
(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.
(12) "Family child-care home" is defined by KRS 199.894(5).
(13) "Full day" means child care that is provided for five (5) or more hours per day.
(14) "Health professional" means a person actively licensed as a:
(a) Physician;
(b) Physician[Physician's] assistant;
(c) Advanced practice registered nurse;
(d) Qualified mental health professional as defined by KRS 600.020(52)[(50)]; or
(e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.
(15) "Homeless" means an individual or a family lacking a fixed, regular, and adequate nighttime residence, including a child experiencing homelessness as defined by 45 C.F.R. 98.2[due to economic hardship].
(16) "In loco parentis" means a person acting in place of a parent, including:
(a) A legal guardian;
(b) An individual related by blood, marriage, or adoption to the child; or
(c) A nonrelative pursuing legal custody of the child within one (1) year of application.
(17) "Infant" means a child who is less than one (1) year old.
(18) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.
(19) "Parent" is defined by 45 C.F.R. 98.2.
(20) "Part day" means child care that is provided for less than five (5) hours per day.
(21) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.
(22) "Preventive services" is defined by KRS 620.020(10).
(23) "Provider" means the entity providing child care services,

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such as:

- (a) A member of a limited liability corporation (LLC);
- (b) The head of an organization;
- (c) An owner of a corporation;
- (d) A member of a partnership;
- (e) An owner of a business;
- (f) An individual provider; or
- (g) A stockholder of a stock-holding company.

(24) "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(25) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(26) "Related" means having one (1) of the following relationships:

- (a) Child;
- (b) Stepchild;
- (c) Grandchild;
- (d) Great-grandchild;
- (e) Niece;
- (f) Nephew;
- (g) Sibling;
- (h) Child in legal custody; or
- (i) Child living in loco parentis.

(27) "Responsible adult" means a person other than the applicant who is in the child's household and who is:

- (a) The natural parent, adoptive parent, or stepparent; or
- (b) The spouse of an individual caring for a child in loco parentis.

(28) "School-age child" means a child who has reached the sixth birthday.

(29) "State median income" or "SMI" means the estimated median income of households in the state.

(30) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

- (a) Defined by 7 U.S.C. 2012; and
- (b) Governed by 921 KAR Chapter 3.

(31) "Teenage parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.

(32) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. The following is received at the cabinet or its designee's office:

a. ~~Until April 1, 2017, a signed DCC-90, Application for Subsidized Child Care Assistance, 11/09, or DCC-90.1, Intent to Apply for Child Care Assistance, 11/09; or~~

~~b. Effective April 1, 2017, a signed DCC-90, Subsidized Child Care Assistance Application Summary, [1-04/17;] or~~

b. Submission in accordance with 921 KAR 2:040, Section 1(6); or

2. The agency is contacted, if the person:

- a. Has a physical or mental disability; and
- b. Needs special accommodation due to the impairment.

(b) An applicant may designate an authorized representative who presents identification to make application.

(c) An applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:

- 1. Deaf; or
- 2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. [Section] 2000d.

(3) The cabinet or its designee shall not discriminate against

an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, and 7 of this administrative regulation.

(a) An applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of:

- a. Income;
- b. Technical eligibility; and
- c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(c) A homeless household shall have ~~be approved for CCAP with~~ an extended period to verify information not to exceed three (3) months ~~ninety (90) days~~ in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) ~~To Provide written notification of the decision~~ Within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send [:

~~1. A DCC-105, Child Care Assistance Program Notice of Action, 11/09, to the applicant in accordance with Section 11(5)(a) of this administrative regulation; or~~

~~2. Effective April 1, 2017,] notice to the applicant in accordance with Section 11(4)[11(5)(b)] of this administrative regulation.~~

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

- (a) Assistance until approval of the application for benefits; or
- (b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

- 1. Resident of Kentucky; and
- 2. U.S. citizen or qualified alien;

(b) Is under age:

- 1. Thirteen (13) at the time of application or recertification; or
- 2. Nineteen (19) at the time of application or recertification and is:

a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

- a. Licensed child-care center;
- b. Certified child-care home;
- c. Public school;
- d. Head Start; or
- e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or SNAP case in which the child in

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need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child-care~~[Child care]~~ center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child-care~~[child care]~~ homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

(5) A child in foster care shall not be eligible for CCAP.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

~~(d) [A recipient who is less than ninety (90) days from:~~

~~1. The loss of employment, required number of employment hours, or training through no fault of the recipient and is actively searching for employment in accordance 42 U.S.C. 9858c(c)(2)(N)(iii);~~

~~2. The start of maternity leave; or~~

~~3. The start of medical leave from employment due to a health condition verified by a health professional;~~

(e) A relative caregiver pursuant to the conditions of a program established by KRS 605.120(5), who meets:

1. All requirements in this section; and

2. Income eligibility standards in Section 7 of this administrative regulation; or

~~(e) [(f)] A teen parent attending high school or pursuing a general equivalency degree (GED), including a period of recess or temporary break not to exceed three (3) months.~~

(2) A child shall be eligible to receive CCAP for up to three (3) months or in accordance with Section 8 of this administrative regulation if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who is homeless;

(b) An applicant who:

1. Is engaged in job search; and

2. Submits a completed DCC-90P, CCAP Job Search Documentation, within the three (3) months of job search verifying a minimum of ten (10) contacts with prospective employers;

(c) A recipient after the loss of employment, a reduction in the required number of employment hours, or cessation of attendance at a job training or educational program in accordance with 42 U.S.C. 9858c(c)(2)(N)(iii), to allow for job search or resumption of work or attendance at job training or educational program; or

(d) A recipient on maternity leave or other medical leave from employment as verified by a health professional, unless a temporary disability as verified by a health professional necessitates longer than three (3) months of CCAP eligibility.

(3) Compliance with subsection (1) of this section for an

applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section ~~7(6)(d)~~~~[7(7)(d)]~~ of this administrative regulation by an hourly pay rate of no less than minimum wage established in accordance with KRS 337.275. ~~[(3) Until April 1, 2017, an applicant eligible in accordance with this section shall sign and return the DCC-91, Client Rights and Responsibilities Sheet, and the DCC-94, Child Care Service Agreement and Certificate, 11/09.]~~

Section 5. Requirements for Protection and Permanency Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

(3)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 10 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan. ~~[(5) Until April 1, 2017, an applicant eligible in accordance with this section shall sign and return the DCC-91.]~~

Section 6. Kentucky Works Child Care Eligibility Determination.

(1) A child shall be eligible for CCAP if the child:

(a) Resides with an applicant who is participating in the Kentucky Works Program described in 921 KAR 2:370; and

(b) Meets the requirements listed in Section 3 of this~~[the]~~ administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application as an integral part of a Kentucky Works Program self-sufficiency plan. ~~[(3) Until April 1, 2017, an applicant eligible in accordance with this section shall sign and return the DCC-91.]~~

Section 7. Income Eligibility. (1) A child shall be eligible for ~~the~~ CCAP if the family's income is less than or equal to:

(a) 160 percent of the federal poverty level as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2018 at initial application; or

(b) 165 percent of the federal poverty level as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2018 at recertification or recalculation.

(2) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(3) A child ~~who~~~~[that]~~ is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(4) Excluded income shall be:

(a) K-TAP child only payments, including back payment;

(b) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(c) Educational grant, loan, scholarship, and work study income;

(d) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(e) The value of United States Department of Agriculture program benefits including:

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1. Donated food;
  2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;
  3. Special food service program for a child pursuant to 42 U.S.C. 1775;
  4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and
  5. The monthly allotment under SNAP;
- (f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;
- (g) In-kind income;
- (h) Reimbursement for transportation in performance of an employment duty, if identifiable;
- (i) Nonemergency medical transportation payment;
- (j) Highway relocation assistance;
- (k) Urban renewal assistance;
- (l) Federal disaster assistance and state disaster grant;
- (m) Home produce utilized for household consumption;
- (n) Housing subsidy received from federal, state, or local governments;
- (o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;
- (p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;
- (q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:
1. Senior health aide; or
  2. Member of the:
    - a. Service Corps of Retired Executives; or
    - b. Active Corps of Executives;
  - (r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5085 if less than the minimum wage under state or federal law, whichever is greater, including:
    1. Volunteers in Service to America (VISTA);
    2. Foster Grandparents;
    3. Retired and Senior Volunteer Program; or
    4. Senior Companion;
  - (s) Payment from the cabinet for:
    1. Child foster care; or
    2. Adult foster care;
  - (t) Energy assistance payment made under:
    1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or
    2. Other energy assistance payment made to an energy provider or provided in-kind;
  - (u) The principal of a verified loan;
  - (v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;
  - (w) The advance payment or refund of earned income tax credit;
  - (x) Payment made from the Agent Orange Settlement Fund;
  - (y) Payment made from the Radiation Exposure Compensation Trust Fund;
  - (z) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;
    - (aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;
    - (bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;
    - (cc) A payment received from the National Tobacco Growers Settlement Trust;
    - (dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;
    - (ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);
    - (ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;
    - (gg) A discount or subsidy provided to Medicare beneficiaries

pursuant to 42 U.S.C. 1395w-141;

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);

(jj) Income or earnings from a program funded under the Workforce Innovation and Opportunity Act [(WIOA)] pursuant to 20 C.F.R. 676-678 or 34 C.F.R. 361 or 463 [652 and 660 to 674]; [or]

(kk) Michelle P. waiver reimbursement in accordance with 907 KAR 1:835; or

(ll) Supplemental Security Income (SSI) for a child.

(5) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self-employment.

(6) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall:

a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and

b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semi-monthly, monthly, quarterly, or annual earnings;

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by adding gross income from each pay period, dividing by the total number of pay periods considered, and converting the pay period figure to a monthly figure by multiplying a:

a. Weekly amount by[:

(i) 4.334; or

(ii) ~~Effective April 1, 2017,~~ four and one-third (4 1/3);

b. Biweekly amount by[:

(i) 2.167; or

(ii) ~~Effective April 1, 2017,~~ two and one-sixth (2 1/6); or

c. Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received a calendar month of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period;

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph; and

c. Rounding to the nearest dollar.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

2. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3. Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

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- b. Rounding the total amount of allowable expenses to the nearest dollar;
- c. Dividing total gross income and total amount of allowable expenses separately by twelve (12) or the appropriate number of months, and rounding the quotients to the nearest dollar; and
- d. Subtracting the rounded monthly allowable expense quotient from the rounded monthly gross income quotient.
- (e) If the cabinet or its designee becomes aware of a change in circumstance, the best estimate shall be recalculated.

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be recertified at least every twelve (12) months.

(2) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(3) Unless a nonrelative is approved as fictive kin under 922 KAR 1:140 and Section 5 of this administrative regulation, a nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

(4) In accordance with 42 U.S.C. 9858c(c)(2)(N), if a family's income does not exceed eighty-five (85) percent of Kentucky's SMI, the family shall remain eligible for CCAP until recertification in accordance with this section.

Section 9. Payment Rates and Policy. (1)(a) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rate[Rates] Chart[-, 02/16].

(b) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(c) The maximum payment rates shall include the following categories:

- 1. Full day;
- 2. Part day;
- 3. Licensed;
- 4. Certified;
- 5. Registered;
- 6. Infant/Toddler;
- 7. Preschool child; and
- 8. School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

- (a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:
  - 1. National Association for the Education for Young Children;
  - 2. National Early Childhood Program Accreditation;
  - 3. National Association for Family Child Care;

- 4. Council on Accreditation; or
- 5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

- 1. 7 p.m. to 5 a.m. daily; or
- 2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:

- (a) With a special need; or
- (b) Who is age thirteen (13), but under age nineteen (19) at application or recertification, and is:

- 1. Physically or mentally incapable of caring for himself as determined by a health professional; or
- 2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

- (a) Three (3) children receiving CCAP per day; or
- (b) Six (6) children receiving CCAP per day, if those children are:

- 1. A part of a sibling group; and
- 2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 10. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(3)[5(4)] of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

Family Co-Payment Per Day								
Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child	Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay	
			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more
0	899	\$0	\$0	\$0	\$0	\$0	\$0	\$0
900	999	\$2	\$2	\$3	\$2	\$2	\$2	\$2
1,000	1,099	\$3	\$3	\$3	\$2	\$3	\$2	\$3
1,100	1,199	\$4	\$4	\$4	\$3	\$3	\$2	\$3
1,200	1,299	\$4	\$4	\$5	\$4	\$4	\$3	\$3
1,300	1,399	\$5	\$5	\$5	\$5	\$5	\$3	\$4
1,400	1,499	\$6	\$5	\$6	\$5	\$6	\$4	\$4
1,500	1,599	\$7	\$6	\$6	\$6	\$6	\$5	\$5
1,600	1,699	\$8	\$6	\$7	\$6	\$7	\$6	\$6
1,700	1,799	\$9	\$7	\$8	\$7	\$8	\$6	\$7
1,800	1,899	\$10	\$8	\$9	\$7	\$8	\$7	\$8
1,900	1,999	\$10	\$9	\$10	\$8	\$9	\$8	\$9
2,000	2,099	\$11	\$10	\$11	\$8	\$9	\$8	\$9
2,100	2,199.99	\$12	\$10	\$11	\$9	\$10	\$9	\$10
2,200	2,299.99	\$12	\$11	\$12	\$10	\$11	\$9	\$10

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2,300	2,399.99	\$12	\$12	\$13	\$11	\$12	\$9	\$10
2,400	2,499.99	\$12	\$12	\$13	\$12	\$13	\$10	\$11
2,500	2,599.99	\$12	\$13	\$14	\$12	\$13	\$10	\$11
2,600	2,699.99	\$12	\$13	\$14	\$13	\$14	\$12	\$13
2,700	2,799.99	\$12	\$13	\$14	\$13	\$14	\$13	\$14
2,800	2,899.99	\$12	\$13	\$14	\$14	\$15	\$14	\$15
2,900	2,999.99	\$12	\$13	\$14	\$14	\$15	\$16	\$17
3,000	3,099.99	\$12	\$13	\$14	\$15	\$16	\$18	\$19
3,100	3,199.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,200	3,299.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,300	3,399.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,400	3,499.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,500	3,599.99	\$12	\$13	\$14	\$15	\$16	\$24	\$25
3,600	3,699.99	\$12	\$13	\$14	\$15	\$16	\$25	\$25

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(c) In accordance with 45 C.F.R. 98.21, a copayment for an eligible family shall:

1. Be determined at initial application or recertification; and
2. Not increase during the twelve (12) month eligibility period.

Section 11. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a [child care certificate: 1. The]DCC-94, Child Care Service Agreement and Certificate[11/09; or 2. Effective April 1, 2017, the DCC-94, 04/17].

(3) Upon enrollment or reenrollment with a provider, an applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the:

- (a)[The DCC-94 and the] DCC-94[; 11/09]; or
- (b)[Effective April 1, 2017, the] DCC-90[; 04/17].

(4)[Until April 1, 2017, an applicant approved in accordance with Section 5 or 6 of this administrative regulation shall sign and return the DCC-91.

(5) Notification of action. (a)[Until April 1, 2017, a DCC-105, Child Care Assistance Program Notice of Action, 11/09:

1. Shall serve many purposes in the administration of CCAP, including notice to an applicant or recipient of:

- a. Changes in:
  - (i) Copayment;
  - (ii) Certification period; or
  - (iii) Household size;
- b. Approval of:
  - (i) Application; or
  - (ii) Continued eligibility; or
- c. Adverse action, including:
  - (i) Denial of application;
  - (ii) Reduction of CCAP benefits; or
  - (iii) Termination of CCAP benefits;

2. Providing notice of an adverse action shall include:

- a. Reason for the adverse action;
- b. Citation from an applicable state administrative regulation; and

c. Information regarding the:

(i) Informal dispute resolution process in accordance with Section 17 of this administrative regulation; and

(ii) Opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation; and

3. Shall contain language that differs according to the purpose of the notice described in subparagraphs 1 through 2 of this paragraph.

(b) Effective April 1, 2017:

4.] A DCC-94C, Provider Notification Letter, shall provide notice to a provider of a child's discontinuation from CCAP or

disenrollment with a provider.

(b)[; 2.] A DCC-94.1, CHILD CARE Approval/Change Notice, shall provide notice of:

- 1.[a.] A change in the certification period of child;
- 2.[b.] Approval of an application; or
- 3.[c.] Continued eligibility.

(c)[; 3.] A DCC-105, Child Care Denial/Discontinuance Notice,[04/17;] shall provide notice of:

- 1.[a.] Denial of an application;
- 2.[b.] Discontinuance of a CCAP benefit;
- 3.[c.] Reason for adverse action;
- 4.[d.] Citation from an applicable state administrative regulation; and

5.[e.] Information regarding the opportunity to request an administrative hearing in accordance with Section 17 of this administrative regulation.

(d)[; and 4.] The language on the form shall differ according to the purpose of the notice described in paragraphs (a) through (c) of this subsection[subparagraphs 1 through 3 of this paragraph].

(5)[(6)] An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(6)[(7)] Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

(7)[(8)] An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

- (a) Discontinued from CCAP benefits; and
- (b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

(8)[(9)] An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 13(1)(c) of this administrative regulation.

Section 12. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 2:090, Child-care[Child-care] center licensure;

(c) 922 KAR 2:100, Certification of family child-care[child-care] homes;

(d) 922 KAR 2:110, Child-care center[Child-care facility] provider requirements;



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(e) 922 KAR 2:120, Child-care center[Child-care facility] health and safety standards;

(f) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program; [and]

(g) 922 KAR 2:190, Civil penalties;

(h) 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; and

(i) 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals, upon its adoption.

(4) The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180.

(5) If CCAP benefits are reduced or discontinued due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(6) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(7) The cabinet shall send a notice of adverse action at least ten (10) calendar days in advance of taking adverse action.

(8) In accordance with 45 C.F.R. 98.46, the cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) A child experiencing homelessness as defined by 45 C.F.R. 98.2;

(d) K-TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

(~~e~~)(f) Teen parents attending high school or pursuing a general equivalency degree (GED);

(~~f~~)(g) A K-TAP recipient attempting to transition off assistance through employment;

(~~g~~)(h) A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(~~h~~)(i) A low income working parent; or

(~~i~~)(j) A parent in education or training programs leading to self-sufficiency.

Section 13. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and give to the parent for submission to the cabinet or its designee, upon a child's enrollment or reenrollment with the provider and prior to receiving payment from the CCAP, the following form: 1. ~~Until April 1, 2017, the DCC-94, 11/09; or 2. Effective April 1, 2017, the~~ DCC-94[, 04/17];

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c) 1. Maintain the DCC-94E, Child Care Daily Attendance Record, in which the attendance is:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and

b. Signed by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E upon request of the cabinet or its designee;

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

2. 922 KAR 2:090, Child-care[Child-care] center licensure;

3. 922 KAR 2:100, Certification of family child-care[child-care] homes;

4. 922 KAR 2:110, Child-care center[Child-care facility] provider requirements;

5. 922 KAR 2:120, Child-care center[Child-care facility] health and safety standards;

6. 922 KAR 2:180, Requirements for registered child care

providers in the Child Care Assistance Program; [and]

7. 922 KAR 2:190, Civil penalties; [and]

8. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; and

9. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals, upon its adoption; and

(e) Complete the cabinet approved training on billing and the DCC-94E prior to receiving an initial payment from CCAP.

(2) A licensed or certified child care provider shall complete and submit ~~the following form prior to receiving payment from the CCAP:~~

(a) ~~Until April 1, 2017,~~ the DCC-94B, Licensed or Certified Provider Agreement Form, prior to receiving payment from CCAP[10/14; or

(b) ~~Effective April 1, 2017, the DCC-94B, 04/17].~~

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;

2. The work hours for each employee of each shift;

3. The management for each shift;

4. The work hours for each management employee of each shift; and

5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

1. The operating plan meets all requirements of:

a. For a licensed child-care center, 922 KAR 2:090, 922 KAR 2:110, and 922 KAR 2:120; or [and]

b. For a certified family child-care home, 922 KAR 2:100; and

2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected.

(5) A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180 conducted by the cabinet or its designee.

(6) A provider shall be ineligible for CCAP if the provider:

(a) Was discontinued or disqualified from participation in a governmental assistance program due to fraud or abuse of the program;

(b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or

(c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the previous provider will be involved in the new provider's operations in any capacity.

Section 14. Other Services. To the extent [state] funds are available, a child whose family's income is over the income limits for the CCAP described in Section 7 of this administrative regulation may be eligible for:

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

(6) Other items relating to child care services with prior approval of the cabinet.

Section 15. An improper payment, claim, or penalty in CCAP

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shall be handled in accordance with 922 KAR 2:020.

Section 16. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

- 1. A death in the family;
2. An illness of the:
a. Child; or
b. Applicant; or
3. A disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 10[14(4)] of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

- a. Entry into the provider's premises during operating hours; or
b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

a. Cabinet review, including CCAP quality control or case review; or

b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 13(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 13(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 12(8) of this administrative regulation.

Section 17. Administrative Hearings. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with:

(a) 922 KAR 1:320 until April 1, 2017; or (b) 921 KAR 2:055[effective April 1, 2017].

(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:

(a)[1. Until April 1, 2017, 922 KAR 1:320; or 2. Effective April 1, 2017,] 922 KAR 2:260; or

(b) 922 KAR 2:020.

Section 18. Records. Records of CCAP shall be maintained and disclosed in accordance with:

- (1) KRS 194A.060;
(2) 45 C.F.R. 98.90(e); and
(3) 45 C.F.R. 205.50(a)(1)(i).

Section 19. Incorporation by Reference. (1) The following

material is incorporated by reference:

(a)[~~"DCC-90, Application for Subsidized Child Care Assistance", 11/09;~~

(b)] "DCC-90, Subsidized Child Care Assistance Application Summary", 10/17[04/17];

(b) "DCC-90P, CCAP Job Search Documentation", 10/17;

(c)[~~"DCC-90.1, Intent to Apply for Child Care Assistance", 11/09;~~

(d) "~~DCC-91, Client Rights and Responsibilities Sheet", 04/13;~~

(e) "~~DCC-94, Child Care Service Agreement and Certificate", 11/09;~~

(f)] "DCC-94, Child Care Service Agreement and Certificate", 10/17[04/17];

(d)[(g)] "DCC-94.1, CHILD CARE Approval/Change Notice", 10/17[04/17];

(e)[(h)] "~~DCC-94B, Licensed or Certified Provider Agreement Form", 10/14;~~

(f)] "DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;

(f)[(i)] "DCC-94C, Provider Notification Letter", 10/17[04/17];

(g)[(k)] "DCC-94E, Child Care Daily Attendance Record", 7/13;

(h)[(j)] "DCC-97, Provider Billing Form", 04/13;

(i)[(m)] "~~DCC-105, Child Care Assistance Program Notice of Action", 11/09;~~

(n)] "DCC-105, Child Care Denial/Discontinuance Notice", 10/17[04/17]; and

(j)[(o)] "DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 10/17[02/16].

(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.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 19, 2017

FILED WITH LRC: September 29, 2017 at 11 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov.; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(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 CCAP.

(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 CCAP in a manner which is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

(2) If 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 updates content to support the deployment of CCAP on benefit effective October 1st and to ensure policies pertaining to eligibility determinations and certification, children experiencing homelessness, and job search are consistent with federal requirements. In addition, the amendment makes updates and technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure CCAP policy congruence with CCAP deployment on benefit and the federal reauthorization of CCDF, thereby improving qualified families' access to CCAP and helping the state avoid threat of federal corrective action or penalty to its block grant award. The amendment is also necessary to support parents' efforts to achieve self-sufficiency and the health and welfare of vulnerable children.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning policy with more efficient operations and overarching federal requirements, promoting parents' efforts to achieve self-sufficiency and the provision of quality child care, enhancing program integrity, and preserving the health and welfare of vulnerable children.

(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 CCAP in accordance with federal laws and the interests of households and children served.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of June 2017, there were 27,280 unique children in 15,074 unique families receiving CCAP. There were 2,342 child care providers, and 1,755 child care providers were participating in CCAP.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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: Effective with this administrative regulation, regulated entities will be able to access CCAP through the benefit self-service portal, the Department for Community Based Services (DCBS) family support call services, and all DCBS offices during state operating hours. In addition, CCAP will be offered to families seeking public assistance benefits, thus better ensuring working and low-income families have access to the full array of work supports for which they qualify.

(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 costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the policies that are more parent- and work-friendly, including CCAP for initial job search, additional time for homeless households to produce verification, clarifications regarding adjustments during certification periods; and access to CCAP through benefit, family support call services, and local DCBS offices during all state operating hours. Regulated entities will also benefit from improved accuracies of an integrated eligibility and enrollment system and CCAP's alignment with the CCDF Reauthorization of 2014 preserving the state's federal award.

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

(a) Initially: The administrative regulation will be implemented within available federal and state appropriations for CCAP. Implementation of this administrative regulation better ensures the state's compliance with CCDF Reauthorization requirements and reduces the threat for federal corrective action or financial penalty.

(b) On a continuing basis: The administrative regulation will be implemented within available federal and state appropriations for

CCAP. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are the federal Child Care and Development Fund Block Grant, state match, state maintenance of effort funds, and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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? The Child Care Assistance Program is implemented in a like manner statewide. However, provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. The provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

2. State compliance standards. KRS 194A.050(1), 199.892, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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, 199.892, 199.8994, 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Child Care Assistance Program (CCAP) has been operational for a number of years. It does not directly generate revenues for the state; however, it supports the health, safety, and welfare of children and the ability of low-income parents to work and obtain additional skills and training. This administrative regulation will not directly generate any new revenue for the first year. Research suggests that quality early care and education help avoid future public costs.

(b) How much revenue will this administrative regulation

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generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not directly generate any new revenue for 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 federal and 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 federal and 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:

STATEMENT OF EMERGENCY
922 KAR 2:260E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a) 2 and 3 to ensure timely compliance and alignment with the Pub. L. 113-186, Child Care and Development Grant Act of 2014, the associated federal rule, and related programmatic initiatives in effort to avoid costly federal corrective action or federal financial penalty. Additionally, in accordance with KRS 13A.190(1)(a)1, the emergency administrative regulation preserves the health and welfare of children, including children receiving protective and preventive services, children with special needs, homeless children, children of teen parents, children whose parents are transitioning from cash assistance or welfare, and children from low-income households, through its establishment of due process and complaint procedures for child care programming. An ordinary administrative regulation would not allow the agency sufficient time to align policy meeting federal timeframes. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
VICKIE YATES BROWN GLISSON, Secretary

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

922 KAR 2:260E. Child care service appeals.

RELATES TO: KRS Chapter 13B, 23A.010, 194A.005, 194A.030(1), 45 C.F.R. Part 98, 205.10, 42 U.S.C. 601-619, 9857-9858q

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1)

EFFECTIVE: September 29, 2017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) designates the Cabinet for Health and Family Services as the primary state agency responsible for leadership in protecting and promoting the well-being of Kentuckians through the delivery of quality human services. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds. Under 42 U.S.C. 9858c, the cabinet is the agency designated to administer the Child Care and Development Fund block grant. KRS 13B.170 permits an agency to promulgate administrative regulations to carry out provisions of KRS Chapter 13B pertaining to administrative hearings. This administrative regulation establishes cabinet procedures related to appeals and complaints for child care benefits and services under 922 KAR Chapter 2 effective October[April] 1, 2017.

Section 1. Definitions. (1) "Child care assistance" means the subsidy benefits as described by 922 KAR 2:160, Child Care Assistance Program.

(2) "Commissioner" means the Commissioner of the Department for Community Based Services or designee.

(3) "Contract agency" means a business or organization that offers child care benefits or services to the public through a contract or agreement with the cabinet.

(4) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal in accordance with Section 5(8)[5(7)] of this administrative regulation.

(5) "Parent" is defined by 45 C.F.R. 98.2.

(6) "Provider" means the entity providing child care services.

(7) "Registered child care provider" means a caregiver registered under 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program.

Section 2. Right to Appeal. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with 922 KAR 2:160, Section 17(1).

(2) A provider may request an administrative hearing regarding certification, licensure, or civil monetary penalty through the Office of Inspector General, Division of Regulated Child Care in accordance with:

- (a) 922 KAR 2:090, Child-care center licensure;
(b) 922 KAR 2:100, Certification of family child-care homes;[]

or

(c) 922 KAR 2:190, Civil penalties.

(3) An administrative hearing pertaining to a matter not specified in subsection (1) or (2) of this section may be requested in accordance with:

- (a) This administrative regulation; or
(b) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties.

(4) With the exception of subsections (1), (2), and (3)(b) of this section, an individual or provider aggrieved by an action of the cabinet may request an administrative hearing in accordance with this administrative regulation for a matter by which a Kentucky Revised Statute or 922 KAR Chapter 2 expressly permits the appeal of a cabinet action or alleged act.

(5) With the exception of subsections (1), (2), and (3)(b) of this section, a parent or provider aggrieved by an action of the cabinet may request review of the following through an administrative hearing in accordance with this administrative regulation:

- (a) A cabinet denial, reduction, suspension, or termination of services or federally-funded benefit, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapter 2; or
(b) A cabinet failure to act within program timeframes to a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapter 2.

Section 3. Matters Not Appealable through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing in accordance with this administrative regulation:

- (a) A matter in which a court:
1. Has previously made a judicial determination or issued an order on the same issue being appealed; or
2. Is currently engaged in legal proceedings regarding the same issue being appealed;
(b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;
(c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;
(d) Failure to submit a written request for appeal within the time frame established by Section 5(5)(b)[5(4)(b)] of this administrative regulation; or
(e) A situation where state or federal law requires adjustment of a payment or grant, except if a payment or grant computation is

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incorrect.

(2) A complaint of discrimination may be filed with the cabinet's Office of Human Resource Management in accordance with 920 KAR 1:090.

Section 4. Service Complaints. (1) If a matter is not subject to review through an administrative hearing, a parent, a provider, or an early care and education professional may:

(a) Attempt to resolve the issue by submitting a written complaint to the department's Division of Child Care within thirty (30) calendar days after the date of the cabinet action or alleged act; or

(b) Contact the cabinet's Office of the Ombudsman if the matter was not previously reviewed:

1. By that office; or
2. Pursuant to paragraph (a) of this subsection.

(2)(a) The director of the department's Division of Child Care, director's designee, or the cabinet's Office of the Ombudsman shall provide a written response to the complainant within thirty (30) calendar days of receipt of a written complaint not subject to review through an administrative hearing.

(b) The director of the department's Division of Child Care or the ombudsman may grant an extension to the response timeframe given in paragraph (a) of this subsection if:

1. Extenuating circumstances prolong the review of the complaint; and

2. Notice of the extension is provided to the complainant.

(3)(a) A parent, provider, or an early care and education professional dissatisfied with a written response rendered by the director of the department's Division of Child Care, director's designee, or the Office of the Ombudsman may request that the commissioner review the complaint and the written response.

(b) A request for review shall be submitted in writing to the commissioner within ten (10) calendar days of receipt of the written response provided in accordance with subsection (2) of this section.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the complainant of the need for an extension to the timeframe specified in this paragraph.

(d) The department shall abide by the commissioner's written determination.

(4) The department may compile data regarding service complaints to:

(a) Fulfill federal and state reporting requirements; or

(b) Use for program development and evaluation.

Section 5. Request for Appeal. (1) The cabinet shall provide:

(a) Information regarding appeals to a child care assistance applicant or recipient pursuant to 921 KAR 2:046~~[922-KAR-3-030]~~; or

(b) A DCC-88, Child Care Service Appeal Request, to a provider:

1. In accordance with 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program, for a:

a. Withdrawal or denial of child care registration application, not at the request of the applicant; or

b. Revocation or closure of a registered child care provider, not at the request of the provider;

2. Upon a reduction or revocation of a child care provider's STARS level in accordance with:

a. 922 KAR 2:170, STARS for KIDS NOW Program Type I licensed child-care centers; ~~[or]~~

b. 922 KAR 2:210, STARS for KIDS NOW Program for Type II licensed and certified family child-care homes; or

c. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; or

3. Upon a revocation of a trainer's credential in accordance

with 922 KAR 2:240, Kentucky Early Care and Education Trainer's Credential and training approval.

(2) At least ten (10) calendar days prior to the denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall hand-deliver or mail:

(a) A DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals; or

(b) Notice in accordance with 922 KAR 2:160, Section 11.

(3) Unless the matter is appealable in accordance with Section 2(1), 2(2), or 2(3)(b) of this administrative regulation, the cabinet shall send a notice of adverse action at least ten (10) calendar days prior to the denial, reduction, modification, suspension, or termination of a benefit or services.

~~(4)~~~~(3)~~ The cabinet may take emergency action under KRS 13B.125.

~~(5)~~~~(4)~~ A request for appeal shall:

(a) Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance;

(b) Be submitted to the cabinet no later than thirty (30) calendar days from the date:

1. That the notice provided in accordance with subsection ~~(3)~~~~(2)~~ of this section was issued; or

2. Of the occurrence of the disputed action;

(c) Describe the:

1. Cabinet action in dispute; or

2. Alleged act;

(d) Specify:

1. The reason the appellant disputes the cabinet's action;

2. Name of each cabinet staff person involved with the disputed action, if known; and

3. Date of the cabinet action or alleged act in dispute; and

(e) Include the notice provided in accordance with subsection ~~(3)~~~~(2)~~ of this section, if available.

~~(6)~~~~(5)~~(a) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the:

1. Matter is not appealable; and

2. Resolution of the matter may be pursued through the service complaint process described in Section 4 or 9 of this administrative regulation.

~~(7)~~~~(6)~~ If the cabinet receives a written request for appeal within ten (10) calendar days from the date the notice provided in accordance with subsection ~~(3)~~~~(2)~~ of this section was issued or date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the outcome of the appeal.

~~(8)~~~~(7)~~ The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification may include:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing.

Section 6. Administrative Hearing. Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B.

Section 7. Recommended Order. (1) A copy of the recommended order shall be sent simultaneously to:

(a) Each party to the administrative hearing;

(b) The commissioner of the Department for Community Based Services; and

(c) The secretary of the Cabinet for Health and Family Services or designee.

(2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS

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13B.110(4) with the secretary, which shall:

- (a) Be filed within fifteen (15) calendar days of the date the recommended order was mailed;
- (b) Be based on facts and evidence presented at the hearing;
- (c) Not refer to evidence that was not introduced at the hearing; and
- (d) Be sent to each other party involved in the hearing.

Section 8. Final Order. (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.

(2) An aggrieved party may petition for judicial review in accordance with:

- (a) KRS 13B.140 to 13B.160; or
- (b) KRS 23A.010.

Section 9. Contract Agencies. (1) A contract agency shall offer a complaint process consistent with:

- (a) Section 4 of this administrative regulation; or
- (b) Provisions of the contract or agreement between the contract agency and the cabinet, if the provisions are different from Section 4 of this administrative regulation.

(2)(a) An individual dissatisfied with a final written response rendered by a contract agency regarding a complaint may request that the commissioner review the complaint and the contract agency's written response.

(b) A request for review shall be submitted to the commissioner within ten (10) calendar days of the contract agency's written response.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

- 1. Extenuating circumstances prolong the review of the complaint; and
- 2. The commissioner notifies the client of the need for an extension to the timeframe specified in this paragraph.

(d) The contract agency shall abide by the commissioner's written determination.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a)[form] "DCC-88, Child Care Service Appeal Request", 04/17; and

(b) "DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals", 10/17[is incorporated by reference].

(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.

ADRIA JOHNSON, Commissioner  
 VICKIE YATES BROWN GLISSON, Secretary  
 APPROVED BY AGENCY: September 18, 2017  
 FILED WITH LRC: September 29, 2017 at 11 a.m.  
 CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes cabinet procedures related to appeals and complaints for benefits and services under 922 KAR

Chapter 2.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the establishment of cabinet appeal and complaint procedures for benefits and services under 922 KAR Chapter 2.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of cabinet appeal and complaint procedures for benefits and services under 922 KAR Chapter 2.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes through its establishment of cabinet procedures related to appeals and service complaints for benefits and services under 922 KAR Chapter 2.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will change the existing administrative regulation by aligning its content with the new Kentucky All STARS tiered quality-rating improvement system for early care and education and the deployment of the child care assistance program on the benefit eligibility and enrollment system. The amendment to this administrative regulation also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to support the deployment of CCAP on the benefit system and the forthcoming transition to the new child care quality-rating system, All STARS. The changes to this administrative regulation support federal compliance and help the state avoid federally imposed corrective action and financial penalty.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes through its provision of due process and complaint reviews congruent new business processes and programmatic developments.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by preserving due process and complaint procedures for child care benefits and services as governed by 922 KAR Chapter 2.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Less than 200 service appeals for child care programming, including the Child Care Assistance Program, were processed in 2016.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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 to this administrative regulation is largely technical and conforming in nature and does not propose a new impact on regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will experience no new or additional cost as a result of the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation supports the deployment of the Child Care Assistance Program on benefit and the transition to the new quality-rating system for early care and education, All STARS. Both initiatives improve qualified households' access to the full array of work supports and to quality child care programming. The initiatives also support the state's continued federal compliance reducing threat to the state's

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federal award sustaining programming.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding sources for this administrative regulation include the federal Child Care and Development Fund block grant, state matching and maintenance of effort funds for the block grant, and tobacco settlement dollars.

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will impose no new or additional costs 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:

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

45 C.F.R. 98, 205.10, 42 U.S.C. 601-619, 9857-9858q

2. State compliance standards. KRS 13B.170, 194A.010(2), 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 205.10, 42 U.S.C. 601-619, 9857-9858q

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 13B.170, 194A.010(2), 194A.050(1), 45 C.F.R. 98, 205.10, 42 U.S.C. 601-619, 9857-9858q

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues for the subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will impose no new or

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

COUNCIL ON POSTSECONDARY EDUCATION  
(As Amended at ARRS, October 10, 2017)

13 KAR 2:120. Comprehensive funding model for the allocation of state general fund appropriations to public universities.

RELATES TO: KRS 48.600-48.630, 164.001, 164.092

STATUTORY AUTHORITY: KRS 164.092(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.092(12) requires the Council on Postsecondary Education to promulgate an administrative regulation to implement a comprehensive funding model for the public postsecondary education system. This administrative regulation establishes the formula by which general fund appropriations shall be distributed in the public university sector.

Section 1. Definitions. (1) "Academic year" means July 1st through June 30th and all terms completed therein.

(2) "Bachelor's degrees" means total number of bachelor's degrees awarded during the academic year, including ~~including~~ degrees conferred to resident and non-resident students.

(3) "Comprehensive university" is defined by KRS 164.001(7).

(4) "Council" is defined by KRS 164.092(1)(c).

(5) "Formula base amount" is defined by KRS 164.092(1)(e) and includes a deduction for mandated programs.

(6) "Hold-harmless provision" is defined by KRS 164.092(1)(f).

(7) "Institution" means a public university.

(8) "Low-income student~~students~~" means a student who received a Federal Pell Grant after the 2005-2006 academic year for attendance at the institution from which the student received a bachelor's degree~~has received a Federal Pell Grant at any time since 2005-2006 at the graduating institution~~.

(9) "Mandated program" means a research or public service activity not integral to the instructional mission of the institution that is:

(a) Funded with greater than \$450,000 of state appropriations at research universities and \$200,000 at comprehensive universities; and

(b) Directed by statute, resolution, executive branch budget bill, executive order, or other legal mandate.

(10) "Non-resident student" means a student who does not meet the requirements for Kentucky residency for purposes of tuition set forth in 13 KAR 2:045.

(11) "Research university" is defined by KRS 164.092(1)(j).

(12) "Resident student" means a student certified as a Kentucky resident for purposes of tuition pursuant to 13 KAR 2:045 and any non-resident student attending an institution under a state tuition reciprocity agreement entered into by the council.

(13) "Small school adjustment" means a one (1)-time calculation made using the formula base amounts in 2017-2018 and equals:

(a) For a research university, ten (10) percent of the respective formula base amount for each institution; and

(b) For a comprehensive university, ten (10) percent of the total formula base amount for all comprehensive universities divided by six (6).

(14) "STEM+H degrees" means~~mean~~ degrees in the fields of science, technology, engineering, math, and health sciences as determined by the council.

(15) "Stop-loss provision" is defined by KRS 164.092(1)(k).

(16) "Underrepresented minority students" means~~mean~~ students who categorize themselves as Hispanic or Latino, American Indian or Alaska Native, Black or African American, Native Hawaiian or Other Pacific Islander, or two (2) or more races.

(17) "University allocable resources" is defined by KRS 164.092(1)(l).

Section 2. Allocable Resources. The council shall determine total university allocable resources for any given year by calculating each institution's formula base amount and subtracting the small school adjustment and any amount protected by a hold-harmless~~hold-harmless~~ provision. These amounts shall then be combined along with any applicable increase or decrease in general fund appropriation.

Section 3. Metric Weighting. For purposes of Sections 5, 6, and 7 of this administrative regulation, bachelor's degrees, earned credit hours, facilities~~facilities~~ square feet, instruction and student services costs, and full-time~~full-time~~ equivalent student enrollment shall be calculated with differential weights for research and comprehensive universities in accordance with the Public University Funding Model Metric Weighting Chart.

Section 4. Three (3)-year Rolling Average. Each metric shall be calculated by averaging the most recent three (3) years of finalized data.

Section 5. Student Success Outcomes. (1) Thirty-five (35) percent of total university allocable resources shall be certified for distribution to each institution based on its share of the total volume of student success outcomes related to bachelor's degree production and student progression as established in KRS 164.092(6)(a)1. through 5., and in the following denominations:

(a) Nine (9) percent based on the normalized bachelor's degrees awarded in an academic year as described in the Public University Sector Funding Model Formula Chart;

(b) Five (5) percent based on STEM+H bachelor's degrees awarded in an academic year;

(c) Three (3) percent based on bachelor's degrees awarded to underrepresented minority students in an academic year;

(d) Three (3) percent based on bachelor's degrees awarded to low-income students in an academic year;

(e) Three (3) percent based on the number of full-time and part-time undergraduate students reaching or surpassing thirty (30) cumulative earned credit hours in any term completed from August 1st to July 31st;

(f) Five (5) percent based on the number of full-time and part-time undergraduate students reaching or surpassing sixty (60) cumulative earned credit hours in any term completed from August 1st to July 31st; and

(g) Seven (7) percent based on the number of full-time and part-time undergraduate students reaching or surpassing ninety (90) cumulative earned credit hours in any term completed from August 1st to July 31st.

Section 6. Student Credit Hour Production. Thirty-five (35) percent of total university allocable resources shall be certified for distribution to each institution based on its share of total volume of weighted student credit hours earned during an academic year as established in KRS 164.092(6)(b).

(1) Credit hour weighting by course level and discipline shall be in accordance with the Public University Funding Model Earned Credit Hour Production Weighting Index. Credit hours earned by non-resident students shall be given one-half (0.5)~~half~~ the weight of those earned by resident students in comparable programs of study; and

(2) The calculation shall not include credit hours earned by high school students taking courses for college credit.

Section 7. Operational Support. Thirty (30) percent of total university allocable resources shall be certified for distribution to



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each institution in support of vital campus operations as established in KRS 164.092(6)(c)1. through 3.

(1) Ten (10) percent shall be allocated based on ~~facilities~~ **[facilities]** square feet as reported annually to the council and as established in KRS 164.092(6)(c)1.

(2) Ten (10) percent shall be allocated based on direct instruction and student services costs as reported on each institution's annual audited financial statement and as established in KRS 164.092(6)(c)2.

(3) Ten (10) percent shall be allocated based on total ~~full-time~~ **[full-time]** equivalent student enrollment as established in KRS 164.092(6)(c)3 and using the formula established in the Public University Sector Funding Model Formula Chart.

Section 8. Hold-harmless and Stop-loss Provisions. (1) Any final amounts certified for distribution to any institution shall account for any hold-harmless or stop-loss provisions established in KRS 164.092(9).

(2) The council shall determine hold-harmless amounts for institutions in fiscal year 2018-2019 through application of the formula established in this administrative regulation.

(a) If the formula total amount generated for an institution is less than its initial allocable resources, the amount of that difference shall be designated as the institution's hold-harmless allocation.

(b) If applied, an institution maintaining a hold-harmless allocation shall not receive additional distributions of funding through the model until ~~such time as~~ the hold-harmless allocation balance is brought to zero through improved institutional performance, additional appropriations, or some combination thereof.

(c) The council shall apply these hold-harmless allocations, with any applicable credit adjustments as determined annually by the formula, to all applicable institutions in 2018-2019, 2019-2020, 2020-2021, and in any subsequent years as directed by the General Assembly.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Public University Funding Model Formula Chart," June 2017;

(b) "Public University Funding Model Metric Weighting Chart," June 2017; and

~~(c)~~ **(b)** "Public University Funding Model Earned Credit Hour Production Weighting Index," June 2017.

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

SHERRILL B. ZIMMERMAN, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: July 10, 2017

FILED WITH LRC: July 10, 2017 at 3 p.m.

CONTACT PERSON: Travis Powell, General Counsel and Associate Vice President, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555, fax 502.573.1535, email travis.powell@ky.gov.

**COUNCIL ON POSTSECONDARY EDUCATION  
(As Amended at ARRS, October 10, 2017)**

**13 KAR 2:130. Comprehensive funding model for the allocation of state general fund appropriations to Kentucky Community and Technical College System institutions.**

RELATES TO: KRS 48.600-48.630, 164.001, 164.092

STATUTORY AUTHORITY: KRS 164.092(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.092(12) requires the Council on Postsecondary Education to

promulgate an administrative regulation to implement a comprehensive funding model for the public postsecondary education system. This administrative regulation establishes the formula by which general fund appropriations shall be distributed in the Kentucky Community and Technical College System sector.

Section 1. Definitions. (1) "Academic year" means July 1 through June 30 and all terms completed therein.

(2) "~~Associate degree~~ **[Associate's Degrees]**" means total number of ~~associate~~ **[associate's]** degrees awarded during the academic year, ~~including~~ **[Includes]** degrees conferred to resident and non-resident students.

(3) "Council" is defined by KRS 164.092(1)(c).

(4) "Equity adjustment" means ten (10) percent of total KCTCS institution allocable resources divided by sixteen (16) and allocated to each institution.

(5) "~~Formula base amount~~ **[is defined by KRS 164.092(1)(e) and includes a deduction for mandated programs] ~~(5)~~ **[Full time equivalent student enrollment]**" means the total fall semester credit hours earned divided by fifteen (15).] ~~(6)~~ **[Full time equivalent student enrollment]** means the total fall semester credit hours earned divided by fifteen (15).] ~~(6)~~ **[Formula base amount]** is defined by KRS 164.092(1)(e) and includes a deduction for mandated programs].**

(7) ~~(6)~~ "High-wage, high-demand credentials" means credentials tied to occupations identified in the Kentucky Office of Employment and Training's Kentucky Occupational Outlooks and annual Occupational Employment statistics wage data that meet the following criteria:

(a) Have a median annual wage that is greater than or equal to the wage at the 75th percentile for all occupations in the state of Kentucky; ~~or~~

(b) Show growth greater than or equal to the projected percent change for all Kentucky occupations; or

(c) Have 100 or more average annual job openings.

~~(8)~~ ~~(7)~~ "Hold-harmless provision" is defined by KRS 164.092(1)(f).

~~(9)~~ ~~(8)~~ "Institution" means a college in the Kentucky Community and Technical College System.

~~(10)~~ ~~(9)~~ "KCTCS" is defined by KRS 164.092(1)(h).

~~(11)~~ ~~(10)~~ "KCTCS institution allocable resources" is defined by KRS 164.092(1)(i)

~~(12)~~ ~~(11)~~ "Low-income students" means a student who has received a Federal Pell Grant at any time since 2005-2006 at the graduating institution.

~~(13)~~ ~~(12)~~ "Mandated program" means a research or public service activity not integral to the instructional mission of the institution that is:

(a) Funded with greater than \$200,000 of state appropriations; and

(b) Directed by statute, resolution, executive branch budget bill, executive order, or other legal mandate.

~~(14)~~ ~~(13)~~ "Non-resident student" means a student who does not meet the requirements for Kentucky residency for purposes of tuition set forth in 13 KAR 2:045.

~~(15)~~ ~~(14)~~ "Resident student" means a student certified as a Kentucky resident for purposes of tuition pursuant to 13 KAR 2:045 and any non-resident student attending an institution under a state tuition reciprocity agreement entered into by the council.

~~(16)~~ ~~(15)~~ "STEM+H degrees" mean degrees in the fields of science, technology, engineering, math, and health sciences as identified to annually by KCTCS.

~~(17)~~ ~~(16)~~ "Stop-loss provision" is defined by KRS 164.092(1)(k).

~~(18)~~ ~~(17)~~ "Targeted industry credentials" means credentials awarded in Classification of Instructional Programs (CIP) codes developed by the U.S. Department of Education's National Center for Education Statistics that crosswalk to occupations with education or training requirements of an associate degree or below in targeted industry sectors as identified in a targeted industry CIPs index provided annually by KCTCS.

~~(19)~~ ~~(18)~~ "Underprepared students" mean students who tested into developmental English, math, or reading at any period of

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enrollment since the 2010-11 academic year.

~~(20)~~~~(19)~~ "Underrepresented minority students" mean students who categorized themselves as Hispanic or Latino, American Indian or Alaska Native, Black or African American, Native Hawaiian or Other Pacific Islander, or two (2) or more races.

Section 2. Allocable Resources. The council shall determine total KCTCS institution allocable resources for any given year by calculating each institution's formula base amount and subtracting the equity adjustment and any amount protected by a hold harmless provision. These amounts shall then be combined along with any applicable increase or decrease in general fund appropriation.

Section 3. Data Sets. Unless indicated otherwise, each metric shall be calculated using the most recent set of finalized data.

Section 4. Student Success Outcomes. (1) ~~Thirty-five~~~~Thirty five~~ (35) percent of total KCTCS institution allocable resources shall be certified for distribution to each institution based on its share of the total volume of student success outcomes as established in KRS 164.092(8)(a)1. through ~~7~~~~8~~, and in the following denominations:

(a) Ten (10) percent based on the credentials awarded in an academic year using an average of the most recent three (3) years of finalized data and weighted in the following manner:

1.1.0 for an undergraduate certificate or diploma which a student can complete in less than one (1) academic year;

2. 2.0 for an undergraduate certificate or diploma which a student can complete in at least one (1), but less than two (2) academic years;

~~and~~

3. 4.0 for an ~~associate~~~~associate's~~ degree.

(b) Two (2) percent based on STEM+H credentials awarded in an academic year;

(c) Two (2) percent based on credentials awarded to underrepresented minority students in an academic year;

(d) Two (2) percent based on credentials awarded to low-income students in an academic year;

(e) Two (2) percent based on credentials awarded to underprepared students in an academic year;

(f) Two (2) percent based on the number of students in ~~the~~ cohort who transferred to a baccalaureate degree granting college or university after the last term a student was enrolled at a KCTCS institution in the academic year;

(g) Two (2) percent based on targeted industry credentials awarded in an academic year; ~~and~~

(h) One (1) percent based on high-wage, high-demand credentials awarded in an academic year;

(i) Two (2) percent based on the number of full-time and part-time undergraduate students reaching or surpassing fifteen (15) cumulative earned credit hours in an academic year;

(j) Four (4) percent based on the number of full-time and part-time undergraduate students reaching or surpassing thirty (30) cumulative earned credit hours in an academic year; and

(k) Six (6) percent based on the number of full-time and part-time undergraduate students reaching or surpassing forty-five (45) cumulative earned credit hours in an academic year.

Section 5. Student Credit Hour Production. ~~Thirty-five~~~~Thirty five~~ (35) percent of total KCTCS allocable resources shall be certified for distribution to each institution based on its share of total volume of weighted student credit hours earned during an academic year as established in KRS 164.092(8)(b). ~~(4)~~ Credit hour weighting by course discipline shall be in accordance with the KCTCS Funding Model Classification of Instructional Program (CIP) Cost Factors Index.

Section 6. Operational Support. Thirty (30) percent of total KCTCS allocable resources shall be certified for distribution to each institution in support of vital campus operations as established in KRS 164.092(8)(c)1. through 3.

(1) Ten (10) percent shall be allocated based on

~~facilities~~~~facilities~~ square feet as reported annually to the council and as established in KRS 164.092(8)(c)1.

(2) Ten (10) percent shall be allocated based on direct instruction and student services costs as reported to ~~The Integrated Postsecondary Education Data System (IPEDS)~~~~IPEDS~~ and as established in KRS 164.092(8)(c)2.

(3) Ten (10) percent shall be allocated based on total ~~full-time~~~~full time~~ equivalent student enrollment as established in KRS 164.092(8)(c)3.

Section 7. Stop-loss and Hold-Harmless Provisions. (1) Any final amounts certified for distribution to any institution shall account for any hold-harmless or stop-loss provisions established in KRS 164.092(9).

(2) The council shall determine hold-harmless amounts for institutions in fiscal year 2018-2019 through application of the formula established in this administrative regulation.

(3) If the formula total amount generated for an institution is less than its initial allocable resources, the amount of that difference shall be certified to KCTCS as that institution's hold-harmless allocation.

(4) The council shall apply these hold-harmless allocations to all applicable institutions in 2018-2019 and in any subsequent years as directed by the General Assembly.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KCTCS Funding Model Classification of Instructional Program (CIP) Cost Factors Index", June 2017;

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

SHERRILL B. ZIMMERMAN, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: July 10, 2017

FILED WITH LRC: July 10, 2017 at 3 p.m.

CONTACT PERSON: Travis Powell, General Counsel and Associate Vice President, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555 ext. 142, fax 502.573.1535, email [travis.powell@ky.gov](mailto:travis.powell@ky.gov).

### COUNCIL ON POSTSECONDARY EDUCATION (As Amended at ARRS, October 10, 2017)

#### 13 KAR 3:050. GED® eligibility requirements.

RELATES TO: KRS 158.135(1)(a), 158.143, 158.6455, 164.0064(4)(a)

STATUTORY AUTHORITY: KRS 164.0064(1)(a), ~~164.0234~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~KRS 164.0234(1) requires the Kentucky Adult Education Program to promulgate necessary administrative regulations and administer a statewide adult education and literacy system throughout the state.] KRS 164.0064(1)(a) requires that the Kentucky Adult Education Program within the Council on Postsecondary Education promulgate administrative regulations to establish programs that, upon successful completion, result in the award of a high school equivalency diploma [be issued upon passage of the test given by the Kentucky Adult Education Program's approved testing centers in conformance with requirements of the GED® Testing Service]. KRS 164.0064(2) requires [mandates] that at least one (1) of these programs shall include a test aligned with the College and Career Readiness Standards for Adult Education, or any other standards adopted by the federal Office of Career, Technical, and Adult Education, which upon passing, shall entitle students to receive a high school equivalency diploma. 13 KAR 3:010 identifies the GED® test as the valid means of measuring educational achievement in an adult who is a non-high school graduate and of~~

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comparing the adult's competency to that of high school graduates. This administrative regulation establishes the eligibility requirements for taking the GED® test.

Section 1. Eligibility Requirements. The GED® test shall be administered to an applicant with a Kentucky address who:

- (1) Has reached his or her ~~19th~~<sup>nineteenth (19th)</sup> birthday; ~~or~~
- (2)(a) Has reached his or her 18th birthday~~[the legal age of withdrawal in the local school district where he or she resides]; and~~
- (b)1. Except as established in Section 2 of this administrative regulation, has officially withdrawn from public or private school for at least ninety (90) days as certified by the local school district;
  - 2. Is committed or placed in an adult correctional facility;
  - 3. Is enrolled in the Jobs Corps Program of Instruction; or
  - 4. Is enrolled in a National Guard Youth "ChalleNGe" program;~~[4.a. Is considered a state agency child, as defined by KRS 158.135(1)(a); and~~
- b. ~~Is approved for the GED® test by the local school superintendent upon recommendation from the applicant's service region administrator or designee;~~
  - 5.a. ~~Is detained in a juvenile detention center or juvenile holding facility; and~~
  - b. ~~Is approved for the GED® test by the local school superintendent; or~~
  - 6. a. ~~Is enrolled in a Kentucky Department of Education approved Secondary GED® Program under 704 KAR 7:150; and~~
  - b. ~~Is approved for the GED® test by the local school superintendent.]~~
- (3)(a) Has reached his or her 17th birthday;
- (b) Is considered a state agency child, as defined by KRS 158.135(1)(a); and
- (c) Is approved for the GED® test by the local school superintendent.

Section 2. Superintendent Waiver. The local school superintendent or designee in the district where the applicant currently resides may waive the ninety (90) day school withdrawal provision of Section 1(2)(b)1. of this administrative regulation if necessary due to a deadline for postsecondary enrollment, condition of employment, medical reason, family crisis, or other extenuating circumstances.

Section 3. Test Readiness. An applicant shall successfully complete and pass an official readiness test with the same passing scores required to pass the GED® test prior to taking the GED® test.

SHERRILL B. ZIMMERMAN, Chair  
TRAVIS POWELL, General Counsel  
APPROVED BY AGENCY: July 12, 2017  
FILED WITH LRC: July 12, 2017 at noon  
CONTACT PERSON: Travis Powell, General Counsel and Associate Vice President, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555 ext. 142, fax 502.573.1535, email travis.powell@ky.gov.

OFFICE OF THE GOVERNOR  
Department of Veterans' Affairs  
(As Amended at ARRS, October 10, 2017)

**17 KAR 3:020. Charges**~~[Maximum charge]~~ for room and board, goods and services~~[care]~~ at state veterans' nursing homes.

RELATES TO: KRS 40.320, 40.325, 38 U.S.C. 1745(a)  
STATUTORY AUTHORITY: KRS 40.325(2)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.320 identifies the Commonwealth's duty to provide for the well-being of elderly and disabled veterans within state veterans' nursing homes.

KRS 40.325(2) authorizes the Department of Veterans' Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations. This administrative regulation establishes the maximum monthly resident charge for room and board, and goods and services~~[care]~~ at state veterans' nursing homes.

Section 1. Definitions. (1) "Ancillary services" means services for which a separate charge is customarily made. Ancillary services include, for example, [but are not limited to] physical therapy, occupational therapy, speech therapy, laboratory procedures, x-ray services, oxygen services, optometry services, podiatry services, dentist services, audiology services, and pharmacy goods and services. ~~[(2) "Department" or "KDVA" means the Kentucky Department of Veterans Affairs.]~~

~~[(2) [(3)] "Non-routine goods or services" mean those that are directly identifiable with an individual resident and which are not customarily intended for use by all residents including such things as transportation, special activities, cable television services, pay-per-view channels, private or personal phone service, hospitalization, ambulance services, hearing aids, dentures, cosmetology or beautician services (other than basic haircuts), orthotic devices, and specialty care and equipment.~~

~~[(3) [(4)] "Nursing facility" means a state veterans' home (SVH) operated by the Kentucky Department of Veterans Affairs.~~

~~[(4) [(5)] "Private pay" means residents who pay for their nursing home care out of personal funds.~~

~~[(5) [(6)] "Private room" means a room in a state veterans' home that was not built in accordance with the federal VA's community living center requirements, VHA Handbook, Section 1142.01, and does not have a roommate.~~

~~[(6) [(7)] "Resident" means a Kentucky veteran admitted to a state veterans' nursing facility.~~

~~[(7) [(8)] "Room and board" means the room, dietary services, social services, nursing services, basic laundry services, the use of equipment and facilities, and routine medical and surgical supplies.~~

~~[(8) [(9)] "Routine goods or services" mean those which are not identifiable to a particular individual resident but which are used by all residents.~~

~~[(9) [(10)] "Semi-private room" means a room in a state veterans' home that was not built in accordance with the federal VA's community living center requirements, VHA Handbook, Section 1142.01, and does have a roommate.~~

~~[(10) [(11)] "Suite" means a private suite with a private bathroom including a shower that was built in accordance with the federal VA's community living center or small house design requirements, VHA Handbook, Section 1142.01, or Small House Model design guide.~~

Section 2. Charges at State Veterans Nursing Homes. (1) The private pay rate for room and board at a state veterans' nursing facility shall be according to the following schedule:

- (a) Semi-private room - \$4,000/month;
- (b) Private room - \$4,500/month; and
- (c) Suite - \$5,000/month.

(2) The total monthly charge for a private pay resident shall be:

- (a) The applicable private pay rate for room and board;
- (b) Any charge for non-routine goods or services; and
- (c) Any charge for ancillary services.

Section 3. Computation of Room and Board Charges. (1) The monthly charge (personal liability as indicated on the MAP-552) for a Medicaid qualified resident shall be established by the Kentucky Department of Medicaid services in accordance with 907 KAR 1:006. All items and services considered by the Medicaid program to be non-covered as defined in 907 KAR 1:022, that were provided to Medicaid residents during any period of a covered stay, may be billed to the resident or another payer.

(2) The monthly charge for a private pay veteran shall be established in accordance with Section 2 of this administrative regulation.

(3) If a veteran meets the requirements established in 38 U.S.C. 1745(a) for a service-connected disability, the veteran shall

not be charged for any room and board, goods, or services.

(4) The monthly charge for a Medicare recipient qualifying for skilled services shall be the applicable co-payments as established by the Centers for Medicare and Medicaid services *in 42 C.F.R. Part 413.*

(5) A late fee of six (6) percent per annum may be assessed on any unpaid balances.

**Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:**

**(a) U.S. Department of Veterans Affairs, "VHA Handbook, Section 1142.01", August 13, 2008; and**

**(b) U.S. Department of Veterans Affairs, "Small House Model design guide", January 2017.**

**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Kentucky Veterans Centers, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, KY 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.**

(4) "Daily cost of care" means the total annual expenditures on nursing home operations divided by the total number of resident care days provided by the three (3) nursing homes during the course of the fiscal year.

(2) "Department" means the Kentucky Department of Veterans' Affairs.

(3) "Nursing home" means a state veterans' nursing home operated by the Kentucky Department of Veterans' Affairs.

(4) "Resident" means a veteran admitted to a state veterans' nursing home.

~~Section 2. Maximum Monthly Resident Charge. (1) The maximum charge for room and care services at a state veterans' nursing home shall be \$3,700 per month, which shall include medical and nonmedical services provided by the nursing home.~~

~~(2) Medical services obtained from sources other than the nursing home may result in a charge from the source of care to the resident. These medical services may include:~~

- ~~(a) X-ray;~~
- ~~(b) Dental;~~
- ~~(c) Optometry;~~
- ~~(d) Hospitalization;~~
- ~~(e) Ambulance service;~~
- ~~(f) Hearing aids;~~
- ~~(g) Podiatry;~~
- ~~(h) Specialized medications not on the formulary; and~~
- ~~(i) Specialty care and equipment.~~

~~(3) The maximum monthly charge shall be revised periodically based on changes that occur which affect the nursing homes' expenditures or sources of income. These changes may include:~~

~~(a) Increases in the daily cost of care prompted by inflation in the cost of goods, services, and labor utilized to provide nursing care;~~

~~(b) Availability of general funds appropriated to the department by the legislature for operation of the three (3) state veterans' nursing homes; or~~

~~(c) Changes in the per diem allocated by the U.S. Department of Veterans' Affairs.~~

~~(4) If changes are made to the maximum monthly charge, each affected resident shall be notified in writing at least thirty (30) days prior to the change taking effect. The maximum amount shall not be changed without an amendment to this administrative regulation made in accordance with KRS Chapter 13A.]~~

BG (R) NORMAN E. ARFLACK, Commissioner

APPROVED BY AGENCY: August 1, 2017

FILED WITH LRC: August 1, 2017 at 1 p.m.

CONTACT PERSON: Mark Bowman, Executive Director, Office of Kentucky Veterans Centers, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone 502-564-9203, fax 502-564-9240, email mark.bowman@ky.gov.

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Teachers' Retirement System  
(As Amended at ARRS, October 10, 2017)**

**102 KAR 1:070. Application for retirement.**

RELATES TO: KRS 161.600, 161.605(11), 161.640, 161.675

STATUTORY AUTHORITY: KRS 161.310(1), 161.600(4)

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 the funds of the retirement system and for the transaction of business. KRS 161.600(4) requires the board to promulgate administrative regulations concerning application for an annuity to receive benefit payments. This administrative regulation establishes procedures for filing of retirement applications and for determining effective dates of annuity payments.

Section 1. (1) Applications for retirement shall be filed on the Application for Service Retirement or on-line using the Web site maintained by TRS and shall include:

(a)[(1)] A photocopy of the applicant's signed Social Security card;

(b)[(2)] A certified birth certificate;

(c)[(3)] If applicable, a certified marriage certificate; and

(d)[(4)] A voided or cancelled check from the institution to which monthly disbursements shall be electronically transmitted.

(2) If the member files the application for service retirement on-line, he shall:

(a) Either mail or scan and upload the documents required by subsection (1) of this section to the Web site maintained by TRS; and

(b) Notify his employer to complete the on-line application for submission to TRS.

(3) If the member chooses either retirement Option III, IIIa, IV, or IVa, the member shall also include a photocopy of the designated beneficiary's:

(a) Signed Social Security card; and

(b) Certified birth certificate.

Section 2. If a member meets the eligibility requirements set forth in KRS 18A.225(1), and KRS 161.675(1) and (2), the retirement system shall provide the forms required by the Kentucky Department of Employee Insurance for enrollment in health insurance coverage. If the member is eligible for Medicare, the retirement system shall provide the Medicare Eligible Health Plan form.

Section 3. Applications for retirement for service shall not be filed later than the first day of the month immediately preceding the month that retirement is to be effective. (1) Retirement for service shall be effective on the first day of the month following the date that a properly completed and filed application is received at the offices of [Kentucky] Teachers' Retirement System.

(2) A member eligible to retire may exercise this right during a school year in which the member has been in employment if there is filed with the application a statement from the chief administrative officer or other authorized representative of the employing board or agency to the effect that the member is being released from the employment contract for the purpose of retirement.

Section 4.[3:] An application received by mail and bearing the U.S. Postal Service postmark dated on or before the filing date established in Section 2 of this administrative regulation shall be accepted as having been filed in compliance with Section 2 of this administrative regulation.

Section 5.[4:] The provisions of this administrative regulation shall apply to any member who is returning to retirement after having waived his or her retirement allowance under the provisions of KRS 161.605(11).

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Section 6.[5.] Incorporation by reference. (1) The following material is incorporated by reference:

- (a) "Application for Service Retirement", (2017);
- (b) "Instructions for the Withholding Certificate for TRS Annuity Payments, (2017); and
- (c) "Medicare Eligible Health Plan (MEHP)" (2017) form[2046; is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at [Kentucky] Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601-3800, Monday through Friday, 8 a.m. to 5 p.m. This material may also be found on the agency's Web site at [www.trs.ky.gov](http://www.trs.ky.gov).

ARTHUR GREEN, Chairperson

APPROVED BY AGENCY: June 19, 2017

FILED WITH LRC: July 12, 2017 at noon

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

**DEPARTMENT OF MILITARY AFFAIRS  
Division of Administrative Services  
(As Amended at ARRS, October 10, 2017)**

**106 KAR 2:040. Survivor benefits for death of a National Guard or Reserve Component member.**

RELATES TO: KRS 61.315

STATUTORY AUTHORITY: KRS 61.315(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.315(7) requires the Department of Military Affairs to promulgate an administrative regulation to establish the criteria and procedures pertaining to benefits relating to a National Guard or Reserve Component member's death in the line of duty. This administrative regulation establishes the procedures applicable to a claimant who desires to request a hearing concerning a claimant's eligibility for benefits pertaining to a National Guard or Reserve Component member's death in the line of duty after July 1, 2002.

Section 1. Definitions. (1) "Act in the line of duty":

(a) Means, with respect to a member of the National Guard or Reserve component with a home of record in Kentucky:

- 1. Except as established in paragraph (b)6. of this subsection, an act or omission to act;
- 2. A work-related event involving the member; or
- 3. An external force upon the member while the member is engaged in an action or duty for which the member is obligated or authorized by rule, administrative regulation, condition of employment or service, or law to perform for the National Guard or Reserve component; and

(b) Does not mean:

- 1. A nonwork-related disease or condition or a routine work-related disease or condition common to the eligible member's occupation;
- 2. Intentional misconduct of the eligible member;
- 3. The eligible member's intention to bring about his or her own death;
- 4. The eligible member's willfulness or wanton disregard that brings about his or her own death;
- 5. The eligible member's voluntary intoxication if intoxication is a contributing factor in his or her own death; or
- 6. An action or omission of a beneficiary, which act or omission constitutes a substantial factor in the death of an eligible member.

(2) "Child" means a natural, adopted, or posthumously born child or natural, adopted, or posthumously born children, born of the deceased member, without regard to the deceased member's marital status.

(3) "Claimant" means a spouse, child, or parent who files a claim for death benefits pursuant to KRS 61.315.

(4) "Death as a direct result of an act:

(a)1. Means that the antecedent act, omission to act, or event inflicted upon the eligible member was the substantial factor in the member's death; and

2. Includes, if applicable, circumstances related to attending National Guard or Reserve Component-related meetings and events as a representative of the National Guard of Reserve Component, including travel to and from local, state, or national meetings or events; and

(b) Does not mean participation in any sports or athletic event or contest, for the purpose of fund raising or any other purpose.

(5) "Death in the line of duty" means the death of an eligible member due to his or her performance of an act in the line of duty that results in:

- (a) Immediate death;
- (b) A traumatic injury, wound, condition of the body, or disease resulting in death; or
- (c) Medical intervention for a condition in paragraph (b) of this subsection that directly causes death.

(6) "Parent" means a natural or adoptive parent of the member living at the time of the member's death.

(7) [(3) "Death as a direct result of an act":

(a)1. Means that the antecedent act, omission to act, or event inflicted upon the eligible member was the substantial factor in the member's death; and

2. Includes, if applicable, circumstances related to attending National Guard or Reserve Component-related meetings and events as a representative of the National Guard or Reserve Component, including travel to and from a local, state, or national meetings and events; and

(b) Does not mean participation in any sports or athletic event or contest, for the purpose of fund raising or any other purpose.

(4) "Claimant" means a spouse, child, or parent who files a claim for death benefits pursuant to KRS 61.315.

(5) "Spouse" means the lawfully wedded husband or wife of the deceased member living at the time of the member's death, and includes a spouse living apart for any reason from the member at the time of the member's death or a spouse involved in divorce proceedings if a final divorce decree has not been entered. [(6) "Child" means a natural, adopted, or posthumously born child or child born out of wedlock of the deceased member who, at the time of the member's death is living or later is born alive.

(7) "Parent" means a natural or adoptive parent of the member living at the time of the member's death.]

Section 2. Eligibility. (1) Survivors. Except as established in subsection (2) of this section, benefits shall be paid to the surviving spouse, surviving child or children, or both, as established in KRS 61.315(2).

(2) An action or omission of a beneficiary, which act or omission constitutes a substantial factor in the death of an eligible member, shall preclude benefits to that beneficiary only.

Section 3. Proof of Relationship. In filing the claim for death benefits, the claimant or claimant's representative shall submit certification of relationship status by the member's National Guard or Reserve component Casualty Assistance Officer or National Guard or Reserve Component personnel directorate.

Section 4. Submission of Claim by Proper Party. (1) A death benefit claim shall be filed with the office of the Executive Director, Management and Administration, Kentucky Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601.

(2) The claim shall be submitted and executed by the claimant or the claimant's legally designated representative, including the member's Casualty Assistance Officer or National Guard or Reserve Component personnel directorate, upon submission of written proof of that designation.

Section 5. Proof of Death as a Direct Result of an Act in the Line of Duty. The claimant shall provide proof of death of the

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eligible employee as a direct result of an act in the line of duty by providing:

(1) The appropriate U.S. Department of Defense military component DD Form 1300, Report of Casualty; or

(2) For a death in State Active Duty status, the Serious Incident Report (SIR) or a similar document, filed by the Joint Operations Center or a similar agency, documenting to the National Guard Bureau the circumstances of the guardsman's death~~[Another relevant document deemed necessary by the executive director].~~

Section 6. Certification of Payment of Benefits. Upon certification of survivorship rights to the State Death Benefit, the sum authorized by KRS 61.315(2) shall be paid in check by the state treasurer from the general expenditure fund of the state treasury, as required by KRS 61.315(2) and the treasurer shall transmit the check to the department's administrator for payment to the eligible survivor or survivors.

Section 7. False and Fraudulent Statements. A person who knowingly or willfully makes any false or fraudulent statement or representation in any record or report to the department under KRS Chapter 61.315 or this administrative regulation shall cause the survivors to become ineligible for further funds, and those survivors may be responsible for the return to the state treasury of those funds that were received through these false or fraudulent statements or representations.

Section 8. Right of Review. If a death occurs after twelve (12) months and is believed to be related to the definitions established in Section 1(1), ~~(4), or (5)(2), or (3)]~~ of this administrative regulation, the department shall have the right of review to determine if the death constitutes death in the line of duty.

Section 9. Appeals. (1) If the executive director or the executive director's designated representative finds the claimant ineligible for a death benefit, the executive director shall notify the claimant in writing at claimant's last known address of the disposition and shall set forth findings of fact and conclusions of law supporting the decision, as well as claimant's right to a hearing and review by the Adjutant General of Kentucky.

(2) A decision of the department negatively affecting the eligibility of a survivor to be a recipient of the fund shall not be final until the survivor shall have been afforded an opportunity to be heard on the matter.

Section 10. Incorporation by Reference. (1) "Report of Casualty", DD Form 1300, February 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Military Affairs, Division of Administrative Services, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. BULLARD, Director, Administrative Services

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 15, 2017 at 11 a.m.

CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.mil@mail.mil.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Medical Licensure  
(As Amended at ARRS, October 10, 2017)**

**201 KAR 9:260. Professional standards for prescribing and dispensing controlled substances.**

RELATES TO: KRS 218A.172, 218A.205, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b),

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 licenses. KRS 218A.205(3)(a) ~~and (b) require[requires]~~ the board, in consultation with the Kentucky Office of Drug Control Policy, to establish mandatory prescribing and dispensing standards related to controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. This administrative regulation establishes the professional standards for prescribing and dispensing controlled substances.

Section 1. Applicability. (1) A physician who is authorized to prescribe or dispense a controlled substance shall comply with the standards of acceptable and prevailing medical practice for prescribing and dispensing a controlled substance established in this administrative regulation.

(2) The professional standards established in this administrative regulation shall not apply to a physician prescribing or dispensing a controlled substance:

(a) To a patient as part of the patient's hospice or end-of-life treatment;

(b) To a patient admitted to a licensed hospital as an inpatient, outpatient, or observation patient, during and as part of a normal and expected part of the patient's course of care at that hospital;

(c) To a patient for the treatment of pain associated with cancer or with the treatment of cancer;

(d) To a patient who is a registered resident of a long-term-care facility as defined in KRS 216.510;

(e) During the effective period of any period of disaster or mass casualties which has a direct impact upon the physician's practice;

(f) In a single dose~~[prescribed or dispensed]~~ to relieve the anxiety, pain, or discomfort experienced by that patient submitting to a diagnostic test or procedure;~~[or]~~

(g) That has been classified as a Schedule V controlled substance;

(h) That is a Schedule II controlled substance as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services; or

(i) 1. That is a Schedule II controlled substance **prescribed or administered** immediately prior to, during, or within the fourteen (14) days following:

a. A major surgery, being any operative or invasive procedure or a delivery; ~~;~~ or

b. A significant trauma, being any acute blunt, blast, or penetrating bodily injury that has a risk of death, ~~or~~ physical disability, or impairment; ~~;~~ ~~being any operative or invasive procedure or a delivery~~ ~~;~~ and

2. The usage does not extend beyond fourteen (14) days.

Section 2. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes and Monitoring. (1) Each physician prescribing or dispensing a controlled substance shall obtain and document all relevant information in a patient's medical record in a legible manner and in sufficient detail to enable the board to determine whether the physician is conforming to professional standards for prescribing or dispensing controlled substances and other relevant professional standards.

(2) If a physician is unable to conform to professional standards for prescribing or dispensing controlled substances due to circumstances beyond the physician's control, or the physician makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the physician shall document those circumstances in the patient's record and only prescribe or dispense a controlled substance to the patient if the patient record appropriately justifies the prescribing or dispensing of a controlled substance under the

circumstances.

Section 3. Professional Standards for the Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. Prior to the initial prescribing or dispensing of any controlled substance for pain or other symptoms associated with the same primary medical complaint, the first physician prescribing or dispensing a controlled substance shall:

(1) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and:

(a) If the complaint does not relate to a psychiatric condition, conduct a physical examination of the patient relevant to the medical complaint and related symptoms and document the information in the patient's medical record; or

(b) If the complaint relates to a psychiatric condition, perform, or have performed by a psychiatrist or other designated mental health provider, an evaluation appropriate to the presenting complaint and document the relevant findings;

(2) Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the patient encounter, and appropriately utilize that information in the evaluation and treatment of the patient;

(3) After examining the benefits and risks of prescribing or dispensing a controlled substance to the patient, including nontreatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substance in the amount specified;

(4) Only prescribe or dispense Schedule II controlled substances in accordance with the standards established in Section 9 of this administrative regulation;

(5) Not prescribe or dispense a long-acting or controlled-release opioid (e.g. OxyContin, fentanyl patches, or methadone) for acute pain that is not directly related to and close in time to a specific surgical procedure;

(6) Explain to the patient that a controlled substance used to treat an acute medical complaint is for time-limited use, and that the patient should discontinue the use of the controlled substance when the condition requiring the controlled substance use has resolved; and

(7) Explain to the patient how to safely use and properly dispose of any unused controlled substance.

Section 4. Professional Standards for Commencing Long Term Use of Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. (1) Before a physician commences to prescribe or dispense any controlled substance to a patient sixteen (16) years or older for pain or other symptoms associated with the same primary medical complaint for a total period of longer than three (3) months, the physician shall comply with the mandatory professional standards established in subsection (2) of this section. These standards may be accomplished by different licensed practitioners in a single group practice at the direction of or on behalf of the prescribing physician if:

(a) Each practitioner involved has lawful access to the patient's medical record;

(b) There is compliance with all applicable standards; and

(c) Each practitioner performing an action to meet the required standards is acting within the practitioner's legal scope of practice.

(2)(a) The physician shall obtain the following information from the patient and record all relevant information in the patient's medical record:

1. History of present illness;

2. Past medical history;

3. History of substance use and any prior treatment for that use by the patient, and history of substance abuse by first degree relatives of the patient;

4. Past family history of relevant illnesses and treatment; and

5. Psychosocial history.

(b) The physician shall conduct an appropriate physical examination of the patient sufficient to support the medical indications for prescribing or dispensing a controlled substance on

a long-term basis.

(c) The physician shall perform appropriate baseline assessments to establish beginning values to assist in establishing and periodically evaluating the functional goals of any treatment plan.

(d) If a specific or specialized evaluation is necessary for the formulation of a working diagnosis or treatment plan, the physician shall only continue the use of a controlled substance after determining that continued use of the controlled substance is safe and medically appropriate in the absence of that information.

(e) If the physician determines that the patient has previously received medical treatment for the presenting medical complaint or related symptoms and that review of the prior treatment records is necessary to justify long-term prescribing of a controlled substance, the physician shall obtain those prior medical records and incorporate the information therein into the evaluation and treatment of the patient.

(f)1. Based upon consideration of all information available, the physician shall promptly formulate and document a working diagnosis of the source of the patient's medical complaint and related symptoms without simply describing or listing the related symptoms.

2. If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician shall consider the usefulness of additional information, such as a specialized evaluation or assessment, referral to an appropriate specialist, and the usefulness of further observation and evaluation, before attempting again to formulate a working diagnosis.

3. If the physician is unable to formulate a working diagnosis, despite the use of an appropriate specialized evaluation or assessment, the physician shall only prescribe long term use of a controlled substance after establishing that its use at a specific level is medically indicated and appropriate.

(g)1. To the extent that functional improvement is medically expected based upon the patient's condition, the physician shall formulate an appropriate treatment plan.

2. The treatment plan shall include specific and verifiable goals of treatment, with a schedule for periodic evaluations.

(h)1. The physician shall utilize appropriate screening tools to screen each patient to determine if the patient:

a. Is presently suffering from another medical condition which may impact the prescribing or dispensing of a controlled substance; or

b. Presents a significant risk for illegal diversion of a controlled substance.

2. If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from substance abuse or dependence, or a psychiatric or psychological condition, the physician shall take the necessary actions to facilitate a referral to an appropriate treatment program or provider. The physician shall appropriately incorporate the information from the treatment program or provider into the evaluation and treatment of the patient.

3. If, after screening, the physician determines that there is a risk that the patient may illegally divert a controlled substance, but determines to continue long term prescribing of the controlled substance, the physician shall use a prescribing agreement that meets professional standards. The prescribing agreement and informed consent document may be combined into one (1) document.

4. The physician shall obtain and document a baseline drug screen.

5. If, after screening, the physician determines that the controlled substance prescribed to the patient will be used or is likely to be used other than medicinally or other than for an accepted therapeutic purpose, the physician shall not prescribe any controlled substance to that patient.

(i) After explaining the risks and benefits of long-term use of a controlled substance, the physician shall obtain the written informed consent of the patient in a manner that meets professional standards.

(j) The physician shall initially attempt, to the extent possible, or establish and document a previous attempt by another

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physician, of a trial of noncontrolled modalities and lower doses of a controlled substance in increasing order to treat the pain and related symptoms associated with the primary medical complaint, before continuing with long term prescribing of a controlled substance at a given level.

Section 5. Professional Standards for Continuing Long Term Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. (1) If a physician continues to prescribe or dispense a controlled substance beyond three (3) months to a patient sixteen (16) years or older for pain and related symptoms associated with the primary medical complaint, the physician shall comply with the professional standards established in subsection (2) of this section and, if a Schedule II controlled substance, Section 9 of this administrative regulation. These standards may be accomplished by different licensed practitioners in a single group practice at the direction of or on behalf of the prescribing physician as established in Section 4(1) of this administrative regulation.

(2)(a)1. The physician shall ensure that the patient is seen at least once a month initially for evaluation and review of progress. The physician may determine that the patient is to be evaluated less frequently, on a schedule determined by the physician's professional judgment after the physician has determined:

a. The controlled substance prescribed or dispensed has been titrated to the level appropriate and necessary to treat the medical complaint and related symptoms;

b. The controlled substance prescribed or dispensed is not causing unacceptable side effects; and

c. There is sufficient monitoring in place to minimize the likelihood that the patient will use the controlled substance in an improper or inappropriate manner or divert it for an improper or inappropriate use.

(b) At appropriate intervals, the physician shall:

1. Ensure that a current history is obtained from the patient;

2. Ensure that a focused physical examination is considered, and performed, if appropriate; and

3. Perform appropriate measurable examinations as indicated in the treatment plan.

(c) At appropriate intervals, the physician shall evaluate the working diagnosis and treatment plan based upon the information gained to determine whether there has been functional improvement or any change in baseline measures. The physician shall modify the diagnosis, treatment plan, or controlled substance therapy, as appropriate.

(d) If the physician determines that the patient presents a significant risk of diversion or improper use of a controlled substance, the physician shall discontinue the use of the controlled substance or justify its continued use in the patient record.

(e) If the medical complaint and related symptoms continue with no significant improvement in function despite treatment with a controlled substance, and if improvement is medically expected, the physician shall obtain appropriate consultative assistance to determine whether there are undiagnosed conditions to be addressed in order to resolve the medical complaint.

(f) For a patient exhibiting symptoms suggestive of a mood, anxiety, or psychotic disorder, the physician shall obtain a psychiatric or psychological consultation for intervention if appropriate.

(g) If a patient reports experiencing episodes of breakthrough pain, the physician shall:

1. Attempt to identify the trigger or triggers for each episode;

2. Determine whether the breakthrough pain may be adequately treated through noncontrolled treatment; and

3. If the physician determines that the nonmedication treatments do not adequately address the triggers, and after considering the risks and benefits, determines to add an as-needed controlled substance to the regimen, take appropriate steps to minimize the improper or illegal use of the additional controlled substance.

(h) At least once a year, the physician shall perform or shall ensure that the patient's primary treating physician performs a

preventive health screening and physical examination appropriate to the patient's gender, age, and medical condition.

(i)1. At least once every three (3) months, the physician shall obtain and review a current KASPER report, for the twelve (12) month period immediately preceding the request, and appropriately use that information in the evaluation and treatment of the patient.

2. If the physician obtains or receives specific information that the patient is not taking the controlled substance as directed, is diverting a controlled substance, or is engaged in any improper or illegal use of a controlled substance, the physician shall immediately obtain and review a KASPER report and appropriately use the information in the evaluation and treatment of the patient.

3. If a KASPER report discloses that the patient is obtaining a controlled substance from another practitioner without the physician's knowledge and approval, in a manner that raises suspicion of illegal diversion, the physician shall promptly notify the other practitioner of the relevant information from the KASPER review.

4. The physician shall obtain consultative assistance from a specialist if appropriate.

(j) If appropriate, the physician shall conduct random pill counts and appropriately use that information in the evaluation and treatment of the patient.

(k)1. During the course of long-term prescribing or dispensing of a controlled substance, the physician shall utilize drug screens, appropriate to the controlled substance and the patient's condition, in a random and unannounced manner at appropriate times. If the drug screen or other information available to the physician indicates that the patient is noncompliant, the physician shall:

a. Do a controlled taper, consistent with subparagraph 3 of this paragraph;

b. Stop prescribing or dispensing the controlled substance immediately; or

c. Refer the patient to an addiction specialist, mental health professional, pain management specialist, or drug treatment program, depending upon the circumstances.

2. The physician shall discontinue controlled substance treatment or refer the patient to addiction management if:

a. There has been no improvement in function and response to the medical complaint and related symptoms, if improvement is medically expected;

b. Controlled substance therapy has produced significant adverse effects, including instances such as an[but not limited to] overdose or events leading to hospitalization or disability;[or]

c. The patient exhibits inappropriate drug-seeking behavior or diversion; or

d. The patient is taking a high-risk regimen, such as[including but not limited to] dosages ≥ fifty (50) MME/day or opioids with benzodiazepines, without evidence of benefit.

3. The physician shall:

a. Taper controlled substances in a manner slow enough to minimize symptoms and signs of opioid withdrawal; and

b.[shall] Collaborate with other specialists as needed to optimize nonopioid pain management and psychosocial support for anxiety related to the taper.

4. A physician shall stop prescribing or dispensing any controlled substance diverted by or from the patient or taken less frequently than once a day.

Section 6. Professional Standards for the Prescribing and Dispensing of Controlled Substances in an Emergency Department. In addition to complying with the standards for the initial prescribing or dispensing of a controlled substance as established in Sections 3 and 7 of this administrative regulation, a physician prescribing or dispensing a controlled substance for a specific medical complaint and related symptoms to a patient in an emergency department shall not routinely:

(1) Administer an intravenous controlled substance for the relief of acute exacerbations of chronic pain, unless intravenous administration is the only medically appropriate means of delivery;

(2) Provide a replacement prescription for a controlled substance that was lost, destroyed, or stolen;

(3) Provide a replacement dose of methadone, suboxone, or



subutex for a patient in a treatment program;

(4) Prescribe a long-acting or controlled-release controlled substance, such as OxyContin, fentanyl patches, or methadone or a replacement dose of that medication;

(5) Administer Meperidine to the patient; or

(6) Prescribe or dispense more than the minimum amount medically necessary to treat the patient's medical condition until the patient can be seen by the primary treating physician or another physician, with no refills. If the controlled substance prescription exceeds seven (7) days in length ~~[(or exceeds three (3) days if a Schedule II controlled substance)]~~, the patient record shall justify the amount of the controlled substance prescribed.

Section 7. Professional Standards for the Prescribing and Dispensing of Controlled Substances for the Treatment of Other Conditions. (1) Before initially prescribing or dispensing a controlled substance to a patient for a condition other than pain, the physician shall:

(a) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and:

1. If the complaint does not relate to a psychiatric condition, conduct a physical examination of the patient relevant to the medical complaint and related symptoms and document the information in the patient's medical record; or

2. If the complaint relates to a psychiatric condition, perform, or have performed by a psychiatrist or other designated mental health provider, an evaluation appropriate to the presenting complaint and document the relevant findings;

(b) Obtain and review a KASPER report for that patient, for the twelve (12) month period immediately preceding the patient encounter, and appropriately utilize that information in the evaluation and treatment of the patient;

(c) After examining the benefits and risks of prescribing or dispensing a controlled substance to the patient, including nontreatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substance in the amount specified;

(d) Avoid providing more controlled substances than necessary by prescribing or dispensing only the amount of a controlled substance needed to treat the specific medical complaint;

(e) Explain to the patient that a controlled substance used to treat an acute medical complaint is for time-limited use, and that the patient should discontinue the use of a controlled substance when the condition requiring the controlled substance use has resolved; and

(f) Explain to the patient how to safely use and properly dispose of any unused controlled substance.

(2) If the physician continues to prescribe or dispense a controlled substance to a patient for the same medical complaint and related symptoms, the physician shall fully conform to the standards of acceptable and prevailing practice for treatment of that medical complaint and for the use of the controlled substance.

(3) If a physician receives a request from an established patient to prescribe or dispense a limited amount of a controlled substance to assist the patient in responding to the anxiety or depression resulting from a nonrecurring single episode or event, the physician shall:

(a) Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the patient request and appropriately utilize the information obtained in the evaluation and treatment of the patient;

(b) Make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substance in the amount specified, with or without requiring a personal encounter with the patient to obtain a more detailed history or to conduct a physical examination; and

(c) If the decision is made that it is medically appropriate to prescribe or dispense the controlled substance, prescribe or dispense the minimum amount of the controlled substance to appropriately treat the situational anxiety or depression.

Section 8. Responsibility to Educate Patients Regarding the Dangers of Controlled Substance Use. (1) A physician prescribing

or dispensing a controlled substance shall take appropriate steps to educate a patient receiving a controlled substance.

(2) Educational materials relating to these subjects may be found on the board's Web site, [www.kbml.ky.gov](http://www.kbml.ky.gov).

Section 9. Additional Standards for Prescribing or Dispensing Schedule II Controlled Substances~~[or Schedule III Controlled Substances Containing Hydrocodone]~~. (1) In addition to the other standards established in this administrative regulation, prior to the initial prescribing or dispensing of a Schedule II controlled substance~~[or a Schedule III controlled substance containing hydrocodone]~~ to a human patient, a physician shall:

(a) Obtain a medical history and conduct a physical or mental health examination of the patient, as appropriate to the patient's medical complaint, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient for the twelve (12) month period immediately preceding the patient encounter and appropriately utilize that data in the evaluation and treatment of the patient;

(c) Make a written plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and

(e) Obtain written consent for the treatment.

(2) In addition to the other standards established in this administrative regulation, for purposes of treating pain as or related to an acute medical condition, a physician shall not prescribe or dispense more than a three (3) day supply of a Schedule II controlled substance, unless the physician determines that more than a three (3) day supply is medically necessary and the physician documents the acute medical condition and lack of alternative medical treatment options to justify the amount of the controlled substance prescribed or dispensed.

~~(3)(a)~~ In addition to the other standards established in this administrative regulation, a physician prescribing or dispensing additional amounts of a Schedule II controlled substance~~[or a Schedule III controlled substance containing hydrocodone]~~ for the same medical complaint and related symptoms shall:

1. Review, at reasonable intervals based on the patient's individual circumstances and course of treatment, the plan of care;

2. Provide to the patient any new information about the treatment; and

3. Modify or terminate the treatment as appropriate.

(b) If the course of treatment extends beyond three (3) months, the physician shall:

1. Query KASPER no less than once every three (3) months for all available data on the patient for the twelve (12) month period immediately preceding the query; and

2. Review that data before issuing any new prescription or refills for the patient for any Schedule II controlled substance~~[or a Schedule III controlled substance containing hydrocodone]~~.

~~(4)[(3)]~~ To the extent not already required by the standards established in this administrative regulation, for each patient for whom a physician prescribes or dispenses a Schedule II controlled substance~~[or a Schedule III controlled substance containing hydrocodone]~~, the physician shall keep accurate, readily accessible, and complete medical records which include, as appropriate:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed or dispensed;

(h) Instructions and agreements, and

(i) Periodic reviews of the patient's file.

~~(5)[(4)]~~The additional standards for prescribing or dispensing a

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Schedule II controlled substance[~~or a Schedule III controlled substance containing hydrocodone~~] established in this section shall not apply to:

(a) 1. A physician prescribing or administering that controlled substance immediately prior to, during, or within the fourteen (14) days following:

a. A major surgery, being any operative or invasive procedure or a delivery; ~~or~~

b. A significant trauma, being any acute blunt, blast, or penetrating bodily injury that has a risk of death, ~~or~~ physical disability, or impairment; and

2. ~~Being any operative or invasive procedure or a delivery~~; If the prescribing or administering is medically related to the operative or invasive procedure or delivery ~~with and the~~ medication usage that does not extend beyond the fourteen (14) days; or

(b) A physician prescribing or dispensing that controlled substance:

1. For administration in a hospital or long-term-care facility if the hospital or long-term-care facility with an institutional account, or a physician in those hospitals or facilities if no institutional account exists, queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query, within twelve (12) hours of the patient's or resident's admission, and places a copy of the query in the patient's or resident's medical records for use during the duration of the patient's stay at the facility;

2. As part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

3. As part of the patient's hospice or end-of-life treatment;

~~4. [3.]~~ For the treatment of pain associated with cancer or with the treatment of cancer;

~~5. [4.]~~ In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;

~~6. [5.]~~ Within seven (7) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing:

a. Is done as a substitute for the initial prescribing or dispensing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

~~7. [6.]~~ Within ninety (90) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing is done by another physician in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition; or

~~8. [7.]~~ To a research subject enrolled in a research protocol approved by an institutional review board that has an active federalwide assurance number from the United States Department for Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health.

Section 10. Violations. (1) Any violation of the professional standards established in this administrative regulation shall constitute a violation of KRS 311.595(12) and (9), which may result in the imposition of disciplinary sanctions by the board, pursuant to KRS 311.595.

(2) Each violation of the professional standards established in this administrative regulation shall be established by expert testimony by one (1) or more physicians retained by the board, following a review of the licensee's patient records and other available information including KASPER reports.

RANDEL C. GIBSON, D.O., President

APPROVED BY AGENCY: September 5, 2017

FILED WITH LRC: September 6, 2017

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**GENERAL GOVERNMENT CABINET  
Department of Professional Licensing  
Kentucky Board of Ophthalmic Dispensers  
(As Amended at ARRS, October 10, 2017)**

**201 KAR 13:040. Licensing; application, examination; experience; renewal; and inactive status.**

RELATES TO: KRS 326.020, 326.035, 326.040, 326.080  
STATUTORY AUTHORITY: KRS 326.020(3), 326.035, 326.040, 326.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 326.020(3) authorizes the board to promulgate administrative regulations to carry out the purposes and provisions of KRS Chapter 326. KRS 326.040 establishes the requirements for the issuance of a license including experience and passage of an examination. KRS 326.080 requires the annual renewal of licensure. This administrative regulation prescribes the forms, required examinations, experience, renewal requirements, and provisions for inactive status required for licensees.

Section 1. Application for License. (1) A person wishing to obtain a license to practice as an ophthalmic dispenser, pursuant to KRS Chapter 326, shall make application to the Kentucky Board of Ophthalmic Dispensers on the form, Application for Ophthalmic Dispenser License.

(2) An applicant for licensure as an apprentice shall complete the form, Application for Apprentice License.

(3) The board shall admit to the practical examination a candidate who pays the required examination fee of seventy-five (75) dollars and who meets the requirements of KRS 326.040, under oath, that he or she qualifies pursuant to KRS 326.040 and 201 KAR Chapter 13.

Section 2. Required Examinations. (1) The examination required pursuant to KRS 326.040(4) shall consist of passage of each of the following:

(a) The American Board of Opticians (ABO) Basic Examination;

(b) The National Contact Lens Examiners (NCLE) Basic Examination; and

(c) The National Commission of State Opticianry Regulatory Boards (NCSORB) National Practical Examination.

(2)(a) For an applicant who holds an apprentice ophthalmic dispenser license issued by the board, the ABO and the NCLE shall be:

1. Taken before the expiration of thirty (30) months from the date of the original receipt of the apprentice license; and

2. Passed within thirty-six (36) months of the date of the original receipt of the apprentice license.

(b) An apprentice ophthalmic dispenser licensed by the board shall not take the NCSORB National Practical Examination until all other licensure requirements have been completed.

(3) For an applicant who is applying for licensure based on credentials and experience, the candidate shall have the following:

(a) An active license as a dispensing optician issued by any state or territory of the United States or the District of Columbia that has standards at least as stringent as those required by KRS 326.040; or

(b) An active certification as a dispensing optician under the ABO and the NCLE, and at least two (2) years of experience as a dispensing optician, as verified under oath by both the applicant and by a sponsor with personal knowledge of the applicant's work history.

1. The verifying sponsor shall be licensed either as an ophthalmologist, an optometrist, or an optician.

2. An applicant for licensure based on credentials and experience under this paragraph shall have passed the NCSORB National Optician's Practical Examination before application.

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Section 3. Experience. In addition to the experience requirement established in KRS 326.035, the board shall also count as qualifying experience for an applicant for licensure as an ophthalmic dispenser apprentice any time spent:

- (1) Attending a recognized school for ophthalmic dispensing; or
- (2) Working in an optical laboratory as an ophthalmic technician.

Section 4. Licensure Renewal. (1) Each license shall be renewed each year on or before December 31.

(2) Each licensee shall complete and submit one (1) of the following:

(a) Application for Renewal for a licensed ophthalmic dispenser; **[or]**

(b) Application for Apprentice Renewal for a licensed apprentice ophthalmic dispenser; or

(c) The on-line version of each form maintained by the Department of Professional Licensing.

(3) For a renewal postmarked on or before December 31, or completed and submitted on-line before that date, the renewal fee shall be:

(a) Seventy-five (75) dollars for a licensed ophthalmic dispenser; or

(b) Fifty (50) dollars for an apprentice ophthalmic dispenser.

(4) In addition to the renewal fee, a thirty-five (35) dollar administrative late fee shall be paid on a renewal postmarked or submitted on the Department of Professional Licensing website after December 31. A license that has not been renewed by close of business on March 1 shall expire. Applicants may request an extension of time to renew of up to sixty (60) days for reasons related to medical issues, military service, or family emergencies. The applicant shall submit the request for an extension of time in writing, and send the request to the board by certified mail on or before the March 1 expiration date.

(5) In order to qualify for reinstatement of a license that has expired by operation of subsection (4) of this section, either an Application for Reinstatement or an Application for Apprentice Reinstatement shall be submitted to the board. In addition, a reinstatement fee shall be submitted with the application. The reinstatement requirements shall be:

(a) \$300 reinstatement fee and twelve (12) additional hours of continuing education to be completed before the end of the current licensure year for reinstatement as an active status or inactive status ophthalmic dispenser; or

(b) Sixty (60) dollars for reinstatement as an apprentice ophthalmic dispenser.

(6) In order to qualify for licensure renewal, a licensee shall comply with the continuing education requirements of KRS 326.020(3)(b) and 201 KAR 13:055.

(7) All revoked and expired licenses shall be reinstated by the licensee to resume the practice of ophthalmic dispensing.

Section 5. Temporary Permit Application. (1) The board shall, if requested by the applicant, issue a temporary permit to a qualified ophthalmic dispenser, who otherwise would qualify for a license but is in the state on a temporary basis or who has not yet had an opportunity to take an examination to procure a license and whose immediate employment depends upon being licensed by the board.

(2) The permit shall be valid only until the next regular examination date and in no case shall exceed six (6) months following date of issuance.

(3) The fee for a temporary permit shall be fifty (50) dollars, which amount shall accompany the application.

Section 6. Board Action, Notification. (1) The board shall act only upon those applications that are complete.

(2) Each applicant shall pay[enclose] the[prescribed] license application and renewal fees required by KRS 326.040 and 326.080 upon submission of the application~~fee in the form of a check or money order made payable to the Commonwealth of Kentucky State Treasurer.~~

(3) Each applicant shall be notified of the action of the board; and, if favorable, when and where the examination will be held.

**(4) If the board considers denying or resolves to deny an**

**application based solely on an applicant's prior conviction of a crime, the board shall follow the notification and procedure requirements in KRS 335B.030(2).**

**(5) The applicant shall participate in an interview with the application committee upon written request of the board. The application committee shall conduct the interview to determine if the conviction directly relates to the occupation for which the license is sought pursuant to the criteria established in KRS 335B.020(2)(a) through (b) and 335B.030(2)(b).**

Section 7. Inactive Status. (1) Upon application, the board shall grant inactive status to a qualified licensee. While on inactive status, the licensee shall not engage in the practice of ophthalmic dispensing.

(2) The fee for licensure on inactive status shall be thirty-five (35) dollars per year.

(3)(a) Continuing education requirements shall be waived for a licensee on inactive status during the inactive period.

(b) If the inactive licensee applies to the board to return to active status, the licensee shall submit proof that he or she has completed six (6) hours of continuing education for ophthalmic dispenser licensees and four (4) hours of continuing education for apprentice ophthalmic dispenser licensees within the last twelve (12) month period immediately preceding the date on which the application is submitted.

(c) The licensee may request that he or she be allowed to return to active status immediately, with the provision that the licensee shall receive the appropriate number of continuing education hours within six (6) months of the date on which the licensee returns to active status.

(d) Additionally, the licensee shall be responsible for meeting the requirements established in 201 KAR 13:055 in order to qualify for renewal.

(4) To change from inactive status to active status, the ophthalmic dispenser licensee shall:

(a) Pay a reactivation fee of forty (40) dollars; and

(b) Complete six (6) additional hours of continuing education before the end of the current licensure year.

Section 8 Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Ophthalmic Dispenser License", February 2016;

(b) "Application for Apprentice License", August 2017~~February 2016~~;

(c) "Application for Renewal", February 2016;

(d) "Application for Apprentice Renewal", February 2016;

(e) "Application for Reinstatement", February 2016; and

(f) "Application for Apprentice Reinstatement", February 2016.

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GRANVILLE SMITH, Board Chair

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 14, 2017 at 2 p.m.

CONTACT PERSON: John Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5635, fax (502) 696-3925, email marcus.jones@ky.gov.

**GENERAL GOVERNMENT CABINET  
Department of Professional Licensing  
Kentucky Board of Licensure for Ophthalmic Dispensers  
(As Amended at ARRS, October 10, 2017)**

**201 KAR 13:060. Military Service; reciprocity; endorsement.**

RELATES TO: KRS 326.020, 326.040

STATUTORY AUTHORITY: KRS 326.020(3), 326.040

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 326.020 ~~authorizes[grants]~~ the board~~[the authority]~~ to promulgate administrative regulations to carry out the purpose and provisions of KRS Chapter 326. This administrative regulation ~~exempts from licensure[provides for necessity of]~~ renewal~~[of]~~ licenses ~~for active[by]~~ members of the military service, ~~provides[and to provide]~~ reciprocity between the states, ~~and provides licensure by endorsement.~~

Section 1. Military Service. ~~A licensee[any license holder]~~ who is in the military service is exempt from ~~licensure renewal[renewing his license]~~ until he ~~or she~~ is honorably discharged from the service.

Section 2. Reciprocity. (1) A person may be licensed as an ophthalmic dispenser without complying with the provisions of KRS 326.040 if that person:

(a) Holds a valid license as an ophthalmic dispenser in another state whose qualifications at the time of licensure were equal to or higher than those requirements established in KRS 326.040 and 201 KAR 13:040; and

(b) Has been actively engaged in the practice of ophthalmic dispensing for a period of two (2) years immediately preceding the date of application.

(2) An applicant for licensure by reciprocity shall:

(a) Apply for licensure on the form required in 201 KAR 13:040, Section 1(1);

(b) Pay the application fee established in ~~KRS 326.040[201 KAR 13:040, Section 1(2)]~~;

(c) Provide a copy of the current license from the other jurisdiction; and

~~(d)1. Provide documents proving passage of the National Commission of State Opticianry Regulatory Boards (NCSORB) National Practical Examination; or~~

~~2.(e)](e)] Take and pass the NCSORB National Practical Examination within twelve (12) months of application for licensure. The board shall not issue a license until provided documents proving the applicant has passed the NCSORB National Practical Examination[practical examination established in 201 KAR 13:040, Section 8].~~

Section 3. Endorsement. (1) A person may be licensed as an ophthalmic dispenser without complying with the provisions of KRS 326.040 if that person:

(a) Hold an active and current certification as a dispensing optician under the American Board of Opticians (ABO) and the National Contact Lens Examiners (NCLE);

(b) Has been actively engaged in practice as a dispensing optician for at least two (2) years under the sponsorship of a licensed ophthalmologist, licensed optometrist, or optician certified by the ABO and NCLE.

(2) An applicant for licensure by endorsement shall:

(a) Apply for licensure on the form required in 201 KAR 13:040, Section 1(1);

(b) Pay the application fee established in KRS 326.040;

(c) Provide documents verifying that the applicant holds active and current certification as a dispensing optician;

(d) Provide documents verifying the applicant has engaged in at least two (2) years of practice as a dispensing optician sponsored by a licensed ophthalmologist, licensed optometrist, or optician certified by the ABO and NCLE; and

~~(e)1. Provide documents proving passage of the NCSORB National Practical Examination; or~~

~~2.(f)] Take and pass the NCSORB National Practical Examination within twelve (12) months of application for licensure. The board shall not issue a license until provided documents proving the applicant has passed the NCSORB National Practical Examination.~~

GRANVILLE SMITH, Board Chair

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 14, 2017 at 2 p.m.

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GENERAL GOVERNMENT CABINET  
Board of Embalmers and Funeral Directors  
(As Amended at ARRS, October 10, 2017)

201 KAR 15:030. Fees.

RELATES TO: KRS 316.125(2)(a), 316.130(2), (4), (5), ~~316.132, 316.140(2)~~

STATUTORY AUTHORITY: KRS 316.125(2)(a), 316.130(2), (4), ~~[and]~~ (5), ~~316.132, 316.140(2), 316.210(1)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(2)(a), 316.130(2), (4), and (5), ~~316.132,[and] 316.140(2), and 316.210(1)~~ require the board to set out in administrative regulations certain fees. This administrative regulation establishes these fees.

Section 1. The funeral establishment license fee shall be \$150.

Section 2. The embalmer's license renewal ~~fee[fees]]~~[fee] shall be seventy-five (75) dollars.

Section 3. The funeral director's license renewal fee shall be seventy-five (75) dollars.

Section 4. The late fee for a funeral establishment license renewal shall be \$150.

Section 5. The late fee for an embalmer's license renewal or a funeral director's license renewal shall be seventy-five (75) dollars.

Section 6. The fee for an annual courtesy card shall be seventy-five (75) dollars.

Section 7. ~~The fee for processing an application for a continuing education program shall be \$150 per program; for programs included in a conference or convention setting, the total fee shall not exceed \$600.[for approval continuing education program to be \$150, not to exceed \$600 for programs in a conference or convention setting.]~~

Section 8. ~~A processing fee of twenty-five (25) dollars shall apply to all document actions not covered by other fees established by KRS Chapter 316 or this administrative regulation such as national exam score requests, out-of-state verifications, official name change requests, and revisions to wall licensure.[The processing fee for applications (apprenticeship registration, national exam score and out-of-state verifications, individual name changes, information change requests, and form revisions) shall be twenty-five (25) dollars.]~~

Section 9. The registration fee for funeral director apprenticeship is established in KRS ~~316.030(7)[316-125]~~.

Section 10. The registration fee for embalmer apprenticeship is established in KRS ~~316.030(7)[316-125]~~.

Section 11. ~~The registration fee for Level II funeral director registration shall be fifty (50) dollars.[The fee for funeral director Level II registration shall be fifty (50) dollars.]~~

Section 12. ~~The registration fee for Level II embalmer registration shall be fifty (50) dollars.[The fee for embalmer Level II registration shall be fifty (50) dollars.]~~

Section 13. ~~The examination fee for initial licensure as an embalmer is established in KRS 316.030(4)(g).~~

Section 14. The examination fee for initial licensure as a funeral director is established in KRS 316.030(5)(f).

Section ~~15~~~~(13)~~. All fees shall be non-refundable.

KANETHA DORSEY, Executive Director  
APPROVED BY AGENCY: June 13, 2017  
FILED WITH LRC: June 13, 2017 at 10 a.m.  
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**GENERAL GOVERNMENT CABINET  
Board of Embalmers and Funeral Directors  
(As Amended at ARRS, October 10, 2017)**

**201 KAR 15:050. Apprenticeship and supervision requirements.**

RELATES TO: KRS 316.030  
STATUTORY AUTHORITY: KRS 316.210(1)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210(1) authorizes the Kentucky Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of KRS ~~Chapter 316~~~~[316.010 to 316.990]~~. KRS 316.030~~(4)~~~~(3)~~(e) and ~~(5)~~~~(4)~~(d) require an applicant for an embalmer's license or a funeral director's license to serve an apprenticeship under the supervision of a Kentucky-licensed embalmer or funeral director. KRS 316.030~~(9)~~~~(8)~~ requires an applicant to file sworn statements semiannually during the apprenticeship. This administrative regulation establishes the requirements for apprentices and their supervisors, the time for filing the sworn statements, and the additional information required in the sworn statements.

Section 1. Definitions. (1) "Direct Supervision" means that a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, is:

- (a) Physically present with the apprentice, and
- (b) Personally observing ~~and~~~~[the]~~~~and~~ guiding the activities of the apprentice.
- (2) "Supervisor" means the supervisor of record.
- (3) "Supervisor's designee" means a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, who has been approved by the supervisor of record to supervise an apprentice.

Section 2. Apprenticeship Registration. (1) Prior to beginning an apprenticeship, an applicant shall:

- (a) [(1)] File an Apprenticeship Registration Form with the board that [which] includes the sworn statement required by KRS 316.030(7)(6)(c);
- (b) [(2)] Pay the registration fee established in KRS 316.030(7)(6)(b);
- (c) Submit a current photograph;
- (d) Submit a copy of the applicant's high school transcript or diploma, or high school equivalency diploma;
- (e) Submit an official copy of any college transcripts;
- (f) Submit an official copy of National Board scores, if available; and
- (g) [(3)] Appear before the board with the supervisor at the [a] time and place identified by the board.
- (2) The apprenticeship begins the day the applicant and supervisor meet with the board.

Section 3. Supervisor. (1) An apprenticeship shall be served under the board-approved supervisor identified on the Apprenticeship Registration Form as the supervisor of record.

- (2) Apprenticeships for both embalming and for funeral directing may be served concurrently under:
  - (a) A single individual acting as the supervisor of record who

holds both a funeral director's license and an embalmer's license ~~[and]~~ ~~or~~ [or]

(b) Two (2) individual licensees acting as the supervisor[supervisors] of record who together hold~~(holds)~~ both a funeral director's license and an embalmer's license. ~~[- or]~~ ~~for~~ the embalming apprenticeship and the funeral directing apprenticeship, respectively. Each individual supervisor of record shall meet the requirements of Sections 2 through 6 of this administrative regulation.]

(3) Licensed embalmers and licensed funeral directors who seek approval from the board as a supervisor of record shall:

(a) Embalm or direct ~~funerals~~~~[funeral]~~~~[funerals]~~ at the establishment where the apprentice is registered or at another funeral establishment which is identified to the board;

(b) Appear before the board for approval with the apprentice; and

(c) Be responsible for ensuring that the apprentice complies with ~~[the]~~ KRS ~~Chapter 316 and 201 KAR Chapter 15~~~~[316.010 or]~~~~[to]~~ ~~[316.990 and the administrative regulations of the board]~~.

(4) The board may withdraw approval of a supervisor based upon evidence of the inability to supervise an apprentice properly or a violation of ~~KRS Chapter 316 or 201 KAR Chapter 15~~~~[the statutes]~~~~[and administrative regulations governing funeral directing and embalming]~~.

(5) Apprentices may receive supervision by licensees other than the supervisor of record.

(a) Registered embalmer apprentices may be supervised by other licensed embalmers ~~designated~~~~[approved]~~ by the supervisor of record.

(b) Registered apprentice funeral directors may be supervised by other licensed funeral directors ~~designated~~~~[approved]~~ by the supervisor of record.

(c) Supervisors of record that ~~designate~~~~[approve]~~ approve other licensees to provide supervision for an apprentice shall remain responsible for the actions of the apprentice and for the quality of the ~~designated~~~~[delegated]~~ supervision.

(d) The apprentice shall:

- 1. File an Apprentice Travel Form with the board; and
- 2. Maintain the form with his or her calendar.

Section 4. Supervision of Apprentices. (1) Supervision of embalmer apprentices.

(a) For the first twenty-five (25) cases with which an embalmer apprentice assists and throughout the first six (6) months of training, the supervisor or the supervisor's designee shall be present with the apprentice and provide direct supervision of all of the apprentice's embalming activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may perform embalming services if the supervisor or the supervisor's designee is available for ~~[the]~~ consultation and supervision, in accordance with KRS 316.010~~(14)~~~~(9)~~ and 316.030(3)(e), for the duration of the apprenticeship. ~~[- with regard to the activities of the apprentice].~~

(c) The supervisor shall ~~pay the established fee and~~ notify the board in writing on the Level II Apprentice Registration Form that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to embalm without direct supervision. The embalmer Level II registration fee required by 201 KAR 15:030 shall be submitted with the Level II Apprentice Registration Form. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010~~(14)~~~~(9)~~ and 316.030~~(4)~~~~(3)~~(e), for the duration of the ~~apprenticeship~~~~[apprentice]~~~~[apprenticeship]~~.

(2) Supervision of funeral director apprentices.

(a) For the first twenty-five (25) cases with which a funeral director apprentice assists and throughout the first six (6) months of training, the supervisor or the supervisor's designee shall provide ~~direct~~~~[director]~~~~[direct]~~ supervision during all of an apprentice's funeral directing activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may

perform funeral directing services if the supervisor or the supervisor's designee is available for consultation and supervision, in accordance with KRS 316.010(14) and 316.030(5)(d) for the duration of the apprenticeship(9), with regard to the activities of the apprentice].

(c) The supervisor shall ~~pay a fee and~~ notify the board in writing on the Level II Apprentice Registration Form that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to practice funeral directing without direct supervision. The funeral director Level II registration fee required by 201 KAR 15:030 shall be submitted with the Level II Apprentice Registration Form. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010(14)(9) and 316.030(4)(f)(4)], for the duration of the apprenticeship.

(3) Removals.

(a) The supervisor or the supervisor's designee shall be present and provide direct supervision during the removal of bodies for the first six (6) months of the apprenticeship and the first twenty-five (25) removals assisted in by the apprentice.

(b) After an apprentice has served[service] six (6) months of apprenticeship and assisted with twenty-five (25) removals, an apprentice may make removals without the direct supervision of the supervisor or the supervisor's designee if the supervisor has determined that the apprentice is competent to perform removals without direct[director] supervision.

(c) The supervisor shall notify the board in writing on the Level II Apprentice Registration Form that the apprentice has completed the required twenty-five (25) removals and that the supervisor's approval has been given for the apprentice to make removals without direct[director] supervision before the apprentice may[can] begin making these removals.

(4) Calendars.

a The apprentice shall maintain a calendar of the apprentice's work schedule documenting the forty (40) hours per week that he has worked at the location of the apprenticeship.

b The calendar shall identify:

1 The daily work schedule of the apprentice, including beginning and ending times; and

2 The days on which the apprentice does not work.

5 ~~Nothing in this administrative regulation shall limit the amount of time which~~ An apprentice may work at the funeral establishment more hours per week than required by subsection (4) of this section.

(6) The supervisor shall instruct an apprentice and ensure that an apprentice receives experience in all aspects of funeral directing or embalming, as applicable to the individual's apprenticeship.

(a) The instruction shall include:

1. The laws relating to the profession, including KRS Chapter 316 and 201 KAR Chapter 15 ~~316.010 to 316.990 and the administrative regulations promulgated by the board~~; and

2. The theory and application of funeral directing or embalming.

(b) The training and work assignments for apprentice embalmers shall cover the following service items:

1. Initial call details;
2. Removals;
3. Embalming;
4. Restorative art treatment;
5. Posing body and features;
6. Bathing and cosmetizing of bodies;
7. Dressing and casketing of bodies;
8. Recordkeeping;
9. Purchasing of necessary supplies;
10. Preparation of autopsied bodies;
11. Care and maintenance of equipment and embalming room;

and

12. Professional responsibility.

(c) The training and work assignments for apprentice funeral directors shall cover the following service items:

1. Initial call details;
2. Removals;

3. Counseling of families on the types of services and merchandise available;

4. Arrangements of funeral services and merchandise;

5. Preparing death certificates and documents;

6. Preparing applications for certain death benefits, such as Social Security, Veterans Administration, insurance companies, and lodges;

7. Preparing newspaper notices;

8. Conducting visitations or memorial services;

9. Directing funerals and graveside services;

10. Follow-up service to the family after the funeral service has been completed;

11. Recordkeeping;

12. Purchasing of necessary supplies;

13. Caring for equipment and premises; and

14. Professional responsibility.

(7) If an apprentice's supervisor of record is replaced during the apprenticeship period, a Change of Supervisor form shall be completed and submitted within thirty (30) days of the change.

Section 5. Terminating and Reestablishing an Apprentice-ship. (1) The licensed funeral director or licensed embalmer who is the apprentice's supervisor of record shall:

(a) Notify the board in writing by letter of the termination of the apprenticeship within five (5) days of the termination ~~of the apprentice funeral director or embalmer~~;

(b) Identify the name of the apprentice and the date on which the apprenticeship was terminated.

(2) An apprentice funeral director or embalmer shall, within five (5) days of the termination of the person's apprenticeship with a funeral director or an embalmer:

(a) Notify the board in writing by letter that the person is no longer working as an apprentice funeral director or embalmer; and

(b) Identify the date on which the apprenticeship ceased.

(3) An apprentice funeral director or embalmer whose apprenticeship is terminated at the establishment originally identified to the board shall, within thirty (30) days of being employed by another funeral director or embalmer:

(a) Notify the board in writing of the change in employment and apprenticeship by completing and submitting a Change of Supervisor form;

(b) Identify the name, street address, and license number of the funeral director or embalmer under which the apprentice is continuing the apprenticeship;

(c) Complete a new registration as set out in Section 2 of this administrative regulation that is signed by the licensed funeral director or embalmer who is to be the apprentice's new supervisor of record.

(4) An apprentice funeral director or embalmer who is unable to perform the duties of the apprenticeship for a period of two (2) weeks or more because of health related impairments shall immediately notify the board in writing by letter of:

(a) The date on which the apprentice became unable to perform the duties;

(b) The date on which the apprenticeship will be recommenced.

(5) An apprenticeship shall not end later than the administration of the second examination for which the apprentice is eligible.

Section 6. Sworn Statements. (1) An apprentice shall file the Apprenticeship Sworn Statement required by KRS 316.030(7) on or before May 1 and November 1 of each year relating to the six (6) month period ending with the preceding middle of April or middle of October, respectively.

(2) The Apprenticeship Sworn Statement shall include the following information:

(2) The sworn statements by the apprentice serving an

apprenticeship shall include the following information:

(a) The names and dates of funerals in which the apprentice for a funeral director's license assisted in managing during each six (6) month period;

(b) The names and dates of embalming cases in which the apprentice for an embalmer's license assisted during each six (6) month period; and

(c) The names of the service items set forth in Section ~~3(3)~~(6) of this administrative regulation specifically identified for each case in which the apprentice assisted during each six (6) month period.

(3) With the initial sworn statement, an apprentice shall file a report written by the applicant summarizing the requirements of KRS ~~Chapter 316 and 201 KAR Chapter 15~~~~316.010 to 316.990~~ and the administrative regulations promulgated pursuant to ~~KRS 316.010 to 316.990~~.

(4) With subsequent sworn statements, an apprentice shall file a report written by the applicant on an article or a book related to embalming or funeral directing read by the applicant during the six (6) month period. It shall contain a reference that includes the author, title, month and year of publication, and page numbers.

(5) The reports required by subsections (3) and (4) of this section shall be two (2) pages at a minimum, typed, double-spaced, in twelve (12) point font, and with one (1) inch margins on all sides.

(6) An apprentice in mortuary school shall be exempt from the book report requirements of subsections (3) through (5) of this section if the apprentice submits the number of hours he or she is enrolled on the Apprenticeship Sworn Statements.

~~(7)(5)~~(a) The supervisor of record shall sign the sworn ~~the~~ statements and certify that the apprentice has completed the cases and service items identified in the statement.

(b) If the apprentice has received supervision from ~~a supervisor's designee~~~~licensed funeral directors or embalmers other than the supervisor identified on the application for apprenticeship~~, the supervisor of record shall still be responsible for:

1. The activities of the apprentice;
2. Signing the sworn statement; and
3. The certification of completion of cases and ~~service~~~~services~~ service items identified in the statement.

~~(8)(6)~~ Before the activities of the apprentice can count toward ~~towards~~ the requirements of KRS 316.030 ~~(4)(3)~~(f) or ~~(5)(4)~~(e), the case shall include the following service items:

(a) For an embalming case, the apprentice shall have participated in the service items listed in Section ~~4(3)~~(6)(b)3 through ~~7(9)~~(7) of this administrative regulation; and

(b) For a funeral directing case, the apprentice shall have participated in the service items listed in Section ~~4(3)~~(6)(c)3 through 9 of this administrative regulation.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Apprenticeship Registration Form", 2017;
- (b) "Change of Supervisor", 2017;
- (c) "Apprenticeship Sworn Statement", 2017;
- (d) "Level II Apprentice Registration Form", 2017; and
- (e) "Apprentice Travel Form", 2017. ~~(a) "Apprenticeship Registration Form" is incorporated by reference.~~

(2) This material may be inspected, copied, or obtained, ~~subject~~~~subjected~~ subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222 ~~7025 W. Hwy 22, Suite 7, Crestwood, Kentucky 40014~~, Monday through Friday, 8 a.m. to 4:30 p.m.

KANETHA DORSEY, Executive Director

APPROVED BY AGENCY: June 13, 2017

FILED WITH LRC: June 13, 2017 at 10 a.m.

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GENERAL GOVERNMENT CABINET  
Board of Embalmers and Funeral Directors  
(As Amended at ARRS, October 10, 2017)

201 KAR 15:110. Funeral establishment criteria.

RELATES TO: KRS 316.010, 316.030, 316.125, 316.127, ~~316.130, 316.260~~, 16 C.F.R. 453.2(b)(2)-(5), 29 U.S.C. 651

STATUTORY AUTHORITY: KRS 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(1) ~~[46-425(4)]~~ requires a license from the board for the operation of a funeral establishment. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the minimum requirements for the licensing and operation of a funeral establishment.

Section 1. Definitions. (1) "Chapel" means an area where a family and the public may pay their respects to a deceased human being, or an area where funerals or memorial services can be held, and which is a separate and distinct area from the preparation room.

(2) "Preparation room" means an area with a minimum of 100 square feet, which is used exclusively to prepare dead human bodies for final disposition if arterial or cavity injection is a function of the establishment, and which is separate and distinct from the viewing area, chapel, or any other part of the establishment.

(3) "Viewing area" means an area in which a family and the public may pay their respects to a deceased human being.

Section 2. General Requirements. (1) The interior and exterior of the establishment shall be kept free and clean of litter, dirt, debris, and clutter or other objects or conditions which present a potential or actual hazard to the health, safety, or welfare of the public and the funeral establishment's employees.

(2) A person shall not be permitted to be in a preparation room during the course of embalming a dead human body except employees of the establishment in which the human body is being embalmed, registered apprentices, members of the family of the deceased, or authorized representatives of the deceased, or any other individual otherwise allowed by law.

(3) An establishment shall maintain the following documents, if applicable:

(a) Board approved embalming reports which set out the name of each body embalmed, the date of death, the date and time that the embalming took place, the name and signature of the embalmer, and the embalmer's license number;

(b) Proper documentation of the authorization to embalm ~~and the embalming reports shall be maintained for a minimum of three (3) years~~; and

(c) Accurate and current copies of the casket price list, the outer burial container price list, the general price list, and the statement of funeral ~~goods~~~~good~~ goods and services selected as required by the Federal Trade Commission in 16 C.F.R. ~~(4)~~ 453.2(b)(2) through (5), as maintained in the general practice of the establishment.

(4) The funeral establishment shall maintain embalming reports and documentation of embalming authorization for a minimum of three (3) years.

~~(5)~~ A license for establishment shall not be granted for establishments located in any public office building, strip mall, public storage, mini-storage, mini-warehouse, multiunit storage complex, or similar facility used by the general public for the storage of goods.

~~(6)(5)~~ The building in which an establishment is located shall be in conformity with the requirements of the applicable state and local statutes, administrative regulations, ordinances, and zoning provisions.

~~(7)(6)~~(a) Each establishment shall display a sign which identifies the name of the establishment.

(b) The sign shall be in a location that is visible from an adjacent public road.

~~(8)(7)~~ An establishment shall have adequate rest room

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facilities for members of the public if there will be public funeral services or visitation or ceremonial services conducted in the establishment.

Section 3. Visitation and Ceremonial Funeral Service Establishment. ~~[(1)]~~ All ~~[new]~~ Visitation and Ceremonial Funeral Service Establishments that provide visitation and ceremonial funeral services shall have facilities which meet the following requirements:

~~(1)(a)]~~ The establishment shall have a viewing area or chapel which shall be at least 400 square feet in size; ~~and[-]~~

~~(2)(b)]~~ The establishment shall have the applicable equipment necessary for conducting and arranging funeral services, including:

~~(a)[4-]~~ Tables or desks and chairs for arrangement conferences;

~~(b)[2-]~~ Seating for the viewing room;

~~(c)[3-]~~ Casket bier;

~~(d)[4-]~~ Register book stand;

~~(e)[5-]~~ Officiant stand;

~~(f)[6-]~~ Flower display stands; and

~~(g)[7-]~~ Organ, piano, music-producing equipment, or any suitable combination of these items.

~~[(2) Existing visitation and ceremonial funeral establishments that are subject to the "grandfather clause" of KRS 316.127 shall have until July 31, 2007 to meet the requirements established in subsection (1) of this section.]~~

Section 4. Embalming Service Establishment. (1) An establishment that provides embalming services shall have facilities and a preparation room which comply with the requirements of the Occupational Safety and Health Act, 29 U.S.C. 651 and shall also require:

(a) At least one (1) approved embalming table and all professional instruments necessary for embalming and the preparation of dead human bodies; and

(b) That a preparation room shall not be used as a storage area other than for supplies pertaining to the embalming and preparation of dead human bodies.

(2) Human remains shall not be prepared for disposition except by a licensed embalmer or a Level 2 apprentice, in accordance with ~~[the provision]~~ ~~[provisions]~~ ~~[of]~~ KRS 316.030, in a preparation room which meets the requirements of this administrative regulation.

(3) All windows and doors shall be constructed or screened to prevent persons from looking into the preparation room.

(4) Each preparation room entrance shall be lockable and shall display a sign indicating private or restricted entry.

(5) Licensed embalmers may perform removals and transport dead bodies.

Section 5. Full Service Funeral Establishments. ~~[(1)]~~ In addition to the regulatory requirements ~~established~~ ~~[set forth]~~ in ~~Sections~~ ~~[Section]~~ ~~[Sections]~~ 3 and 4 of this administrative regulation, a ~~[new]~~ full service funeral establishment shall meet the following additional requirements:

~~(1)(a)]~~ The establishment shall have an area available to the public devoted to the display of funeral merchandise. Caskets or casket sections may be viewed by sample, computer, catalog, or other display that corresponds to the current general price list for the funeral establishment; and

~~(2)(b)]~~ In addition to the viewing area or chapel, the establishment shall have a separate room or office for arranging funerals. This room may be used to satisfy the requirements of ~~subsection (1) of this section~~ ~~[paragraph (a) of this subsection]~~. ~~[(2) Existing full service funeral establishments that are subject to the "grandfather clause" of KRS 316.127 shall have until July 31, 2007 to meet the requirements established in subsection (1) of this section.]~~

Section 6. Inspections. (1) Each establishment shall be subject to inspection at the convenience of ~~the~~ ~~[a]~~ board inspector.

(2) The inspector shall inspect the establishment to see if it has suitable and dignified quarters appropriate for the category of

services for which it is licensed.

(3) An establishment that provides embalming services shall have completed and signed embalming reports available for inspection.

(4) The following forms shall be available for inspection, with a copy available to the inspector for the inspector's records:

(a) A current general price list of charges for ~~services~~ ~~[service]~~ ~~[services]~~ to the public;

(b) A current price list of caskets as charged to the public; and

(c) A current price list of outer burial containers as charged to the public.

Section 7. Establishment Supervisor. (1) Each facility establishment shall have a Kentucky-licensed funeral director and a Kentucky-licensed embalmer or an individual licensee as required by KRS 316.125 ~~(2)(b)5(b)(4)]~~ ~~(2)(b)4]~~ to manage and supervise the facility.

(2) The establishment shall notify the board of a change of the funeral director or the embalmer supervisor ~~by submitting the Information and Name Change Application~~ ~~[in the form of an affidavit]~~ signed by the licensed owner and the new supervisor within five (5) working days of the change.

(3) A supervisor who ~~leaves~~ ~~[leave]~~ ~~[leaves]~~ the employment of an establishment shall notify the board ~~in writing~~ within five (5) working days.

Section 8. Transferability. (1) Establishment licenses shall not be transferable.

(2) If a sale ~~or~~ ~~[,]~~ lease ~~relocation, or name change~~ occurs:

(a) The existing establishment license may remain in force by mutual consent of the parties for a period of thirty (30) days or until the next regularly scheduled board meeting, whichever comes first.

(b) During the transition period, the establishment shall be operated under the name shown on the existing license until a new license is issued.

(c) An application for a new license shall be submitted for review at the next board meeting following the sale ~~or~~ ~~[,]~~ lease ~~relocation, or name change~~.

~~(3) If a relocation or name change occurs, an Information and Name Change Application shall be submitted to the board.~~

~~(4)(3)(a)]~~ Following the death of a Kentucky-licensed owner, funeral director, or embalmer, the establishment may operate for ninety (90) days while under temporary supervision by a licensed funeral director or embalmer. A licensee who is already identified as the supervisor for another establishment under KRS 316.125(4) may act as the temporary supervisor for the establishment under this section for the limited ninety (90) day period.

(b) The temporary supervisor shall be identified to the board in writing ~~by letter~~ within fifteen (15) days of the death of the Kentucky-licensed owner, funeral director, or embalmer.

(c) A licensee may be the temporary supervisor for only one (1) establishment at a time.

Section 9. Opening of an Establishment. (1) An establishment shall not ~~operate~~ ~~[be operated]~~ or be opened for business prior to the issuance of an establishment license by the board for that establishment.

~~(2) To apply for an establishment license, the following shall be submitted to the board:~~

~~(a) A completed Establishment Application;~~

~~(b) The fee required by 201 KAR 15:030, Section 1;~~

~~(c) A picture of the establishment and signage;~~

~~(d) A picture of the manager;~~

~~(e) If purchasing the establishment, a notarized letter from the seller;~~

~~(f) If a corporation, the articles of incorporation;~~

~~(g) If a partnership, the partnership agreement; and~~

~~(h) If a limited liability company, the LLC agreement.~~

~~(3) Violation of this section shall be grounds for denial of the application for the license by the board.~~

~~(4) All establishment licenses shall expire July 31 of each year. Establishments shall renew by submitting the following~~



to the board:

- (a) An Establishment Renewal Application;
- (b) The renewal fee established in KRS 316.130(4) and 201 KAR 15:030; and
- (c) A list of all licensed funeral directors and embalmers affiliated with the establishment.

Section 10. Advertising and Signage. (1) An establishment shall use the exact name listed on the license for the establishment in all advertisements and signage.

(2) Descriptive terms shall be distinctly separated from the name of the establishment in all signage and advertisements unless registered as part of the official name.

~~(3)(2)~~(3) Any advertising, designation, or signage for the funeral establishment shall match the classification on the establishment's license.

Section 11. ~~[Publication of Obituary. A licensed establishment that][which][conducts a funeral service and agrees to draft and arrange the publication of an obituary, shall list the name of the licensed funeral director who arranges and conducts the service as well as the name and address of the establishment that the funeral director is practicing through.~~

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

- (a) "Establishment Application", 2017;
  - (b) "Information and Name Change Application", 2017; and
  - (c) "Establishment Renewal Application", 2017.
- ~~["Establishment Application", 2017][Application for Funeral Establishment, 2006] edition, is incorporated by reference.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222[8442 Westport Road, Louisville, Kentucky 40242-7025], Monday through Friday, 8 a.m. to 4:30 p.m.

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**GENERAL GOVERNMENT CABINET**  
**Board of Nursing**  
**(As Amended at ARRS, October 10, 2017)**

**201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.**

RELATES TO: KRS 218A.172, 218A.205(3)(a), (b), 314.011(7), 314.011(8), 314.042, 314.193(2), 314.196

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) and (b) require[requires] the Board of Nursing, in consultation with the Kentucky Office of Drug Control Policy, to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for

the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(10).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) "KASPER" means the Kentucky All Schedule Prescription Electronic Reporting system established in KRS 218A.202.

Section 2. (1) The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

- (a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;
- (b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;
- (c) Neonatal Nursing: Scope and Standards of Practice;
- (d) Nursing: Scope and Standards of Practice;
- (e) Pediatric Nursing: Scope and Standards of Practice;
- (f) Psychiatric-Mental Health Nursing 2nd Edition: Scope and Standards of Practice;
- (g) Scope of Practice for Nurse Practitioners;
- (h) Standards of Practice for Nurse Practitioners;
- (i) Scope of Nurse Anesthesia Practice;
- (j) Standards for Nurse Anesthesia Practice;
- (k) Standards for Office Based Anesthesia Practice;
- (l) Standards for the Practice of Midwifery;
- (m) Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice; and
- (n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, and diagnostic tests which are consistent with the scope and standard of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined in KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the name, address, phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the specialty area of practice of the advanced practice registered nurse.

(b) Pursuant to KRS 314.196(2), an advanced practice registered nurse shall use the Common CAPA-NS Form.

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall file with the board the Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for

Nonscheduled Legend Drugs (CAPA-NS).

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall file the Notification to Discontinue the CAPA-NS After Four (4) Years.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(10)(b), the APRN shall file with the board the Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS).

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS shall report all of his or her United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate numbers to the board when issued to the APRN by mailing a copy of each registration certificate to the board within thirty (30) days of issuance.

(b) Any change in the status of a DEA Controlled Substance Registration Certificate shall be reported in writing to the board within thirty (30) days.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1), except when a CAPA-NS has been discontinued pursuant to KRS 314.042(9) or the provisions of KRS 314.196(4)(b) apply.

Section 8. The board may make an unannounced monitoring visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances.

(1)(a) This section shall apply to an APRN with a CAPA-CS if prescribing a controlled substance. It also applies to the utilization of KASPER.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus. This section does not alter the prescribing limits set out in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient and maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall be discontinued when the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a

controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.

(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for all available data on the patient before issuing a new prescription or a refill for a controlled substance. The APRN shall maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, noncancer pain, the APRN, in addition to the requirements of this section, shall obtain a baseline drug screen or further random drug screens if the APRN:

(a) Finds a drug screen to be clinically appropriate; or

(b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section.

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to the treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed;

(h) Instructions and agreements;

(i) Periodic reviews of the patient's file; and

(j) All KASPER report identification numbers and the date of issuance of each KASPER report.

(11) The requirement to query KASPER shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the

operative or invasive procedure or the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient when submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescribing:

a. Is done as a substitute for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. That is a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) Federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not be utilized by APRNs in this state.

(13) An APRN may order a reverse KASPER report to review the APRN's prescribing practices and to verify the information contained in KASPER is correct.

(14) An APRN shall not issue a prescription for hydrocodone combination products, Schedule II controlled substances, for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, with the following exceptions:

(a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of hydrocodone combination products (the Schedule II controlled substance) is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options which justifies deviation from the three (3) day supply limit on the patient's medical records;

(b) The prescription for hydrocodone combination products (the Schedule II controlled substance) is prescribed to treat chronic pain;

(c) The prescription for hydrocodone combination products (the Schedule II controlled substance) is prescribed to treat pain associated with a valid cancer diagnosis;

(d) The prescription for hydrocodone combination products (the Schedule II controlled substance) is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;

(e) The prescription for hydrocodone combination products

(the Schedule II controlled substance) is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(f) The prescription for hydrocodone combination products (the Schedule II controlled substance) is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of significant trauma; or

(g) Hydrocodone combination products (The Schedule II controlled substance) are/is administered directly to an ultimate user in an inpatient setting.

(15) Prescriptions written for hydrocodone combination products pursuant to subsection (14)(a) through (g) of this section shall not exceed thirty (30) days without any refill.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2012 Edition, American Association of Critical-Care Nurses;

(b) "AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice", 2014 Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association/Society of Pediatric Nursing/National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing 2nd Edition: Scope and Standards of Practice", 2014, American Nurses Association/American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2013 Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2013 Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(k) "Standards for Office Based Anesthesia Practice", 2015 Edition, American Association of Nurse Anesthetists;

(l) "Standards for the Practice of Midwifery", 2011 Edition, American College of Nurse-Midwives;

(m) "Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice", 2013 Edition, Oncology Nursing Society;

(n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014 Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

(o) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)", 12/2014, Kentucky Board of Nursing;

(p) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)", 12/2014, Kentucky Board of Nursing;

(q) "Notification to Discontinue the CAPA-NS After Four (4) Years", 8/2015, Kentucky Board of Nursing; and

(r) "Common CAPA-NS Form", 6/2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

LEWIS PERKINS, President

APPROVED BY AGENCY: July 5, 2017

FILED WITH LRC: September 12, 2017 at 4 p.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email nathan.goldman@ky.gov.

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GENERAL GOVERNMENT CABINET  
Board of Physical Therapy  
(As Amended at ARRS, October 10, 2017)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772, 327.010, 327.050, 327.060, 327.075, 327.080, 327.310

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine if physical therapist applicants meet the qualifications and standards required by KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as a physical therapist or physical therapist assistant based on successful completion by the applicant of one (1) of the following processes:

- (1) Examination;
- (2) Endorsement; or
- (3) Reinstatement.

Section 2. Examination Candidate. (1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:

- (a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;
- (b) Submit certification of completion by the educational administrator of that program;
- (c) Have successfully completed the Jurisprudence Exam;
- (d) Submit a complete Application for Credentialing that includes a photo taken within one (1) year;
- (e) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;
- (f) Effective May 1, 2018, submit to the board a completed nationwide criminal background check as required by KRS 327.310 with the background check completed ~~within~~ no later than six (6) months prior to the date of the filing of the application;

(g) If applicable, submit on an Applicant Special Accommodations Request Form a request for a reasonable accommodation in testing due to a documented disability; and

(h) Register for the NPTE examination.

(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:

- (a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and
- (b) Complete the requirements of subsection (1)(b) through (h) of this section.

(3) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant shall not be eligible to register for any additional examinations.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

- (1) Meet the eligibility requirements of Section 2 of this administrative regulation; and
- (2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:

- (1) Meet the qualifications of Section 2 or 3 of this administrative regulation, except for the retake provisions in Section 2(3) of this administrative regulation;

- (2) Complete a Supervisory Agreement for Applicant with Temporary Permit with one (1) or more physical therapists; and
- (3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

Section 5. (1) Upon issuance of a temporary permit, the physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist currently engaged in the practice of physical therapy in Kentucky who:

- (a) Has practiced in Kentucky for more than one (1) year; and
  - (b) Has an unrestricted license.
- (2) A supervising physical therapist:
- (a) Shall be on-site at all times during the practice of the applicant with a temporary permit;
  - (b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;
  - (c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit;
  - (d) May designate an alternate supervising physical therapist who meets the qualifications of subsection (1)(a) and (b) of this section. The alternate supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in paragraph (a) through (c) of this subsection; and
  - (e) Shall notify the board immediately if the supervisory relationship is terminated.
- (3) The applicant with a temporary permit shall:
- (a) Disclose the applicant's temporary credential status to all patients prior to initiating treatment;
  - (b) Sign documentation with the temporary permit number and designation as defined [required] in 201 KAR 22:053, Section 5(5)(a) or (b); and
  - (c) Notify the board immediately if the supervisory relationship is terminated.
- (4) The temporary permit shall expire the earlier of:
- (a) Six (6) months from the date of issuance; or
  - (b) Notice of exam results by the board.

Section 6. A physical therapist applicant who meets the qualifications for physical therapy licensure by examination may become a special candidate for physical therapist assistant certification by examination.

Section 7. To be eligible for credentialing by endorsement, the applicant shall:

- (1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;
- (2) Meet the requirements established in Section 2(1)(b) through (f) of this administrative regulation;
- (3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky:
  - (a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); or
  - (b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;
- (4) Have an active credential in this profession in another jurisdiction; and
- (5) Have verification of credentials showing the credential has never been revoked, suspended, placed on probation, or is not under disciplinary review in another jurisdiction upon application.

Section 8. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 9. A credential issued by the board shall be in effect until March 31 of the next odd-numbered year.

Section 10. A foreign-educated physical therapist shall comply with the provisions of 201 KAR 22:070.

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Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Credentialing", December 2011;
- (b) "Supervisory Agreement for Applicant with Temporary Permit", January 2017; and
- (c) "Applicant Special Accommodations Request Form", December 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 14, 2017 at 1 p.m.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stegner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200, fax (859) 392-7239, lkelly@aswdlaw.com.

**GENERAL GOVERNMENT CABINET  
Board of Physical Therapy  
(As Amended at ARRS, October 10, 2017)**

**201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or physical therapist assistant.**

RELATES TO: KRS ~~12.355~~, [42-355,] 164.772, 327.050(8), (9), 327.070, ~~327.075~~, [327-075]

STATUTORY AUTHORITY: KRS 327.040(10), (11), 327.310  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327, and [KRS] 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

Section 1. A credential shall be renewed upon:

(1) Payment of the renewal fee established in 201 KAR 22:135 on or before March 31st of each odd numbered year. The fee shall be waived for renewal of license or certificate held by active duty member of Armed Forces as ~~established~~[set forth][established] in KRS 12.355;

(2) Submission of the completed Renewal Application or Reinstatement Application; ~~and~~and

(3) Verification of continued competence as established in 201 KAR 22:045.

Section 2. Credentials not renewed by the board by March 31 of each odd numbered year shall lapse.

Section 3. (1) A credential holder who has a credential that has lapsed may, within three (3) years of the lapsed date, reinstate upon:

(a) Meeting the requirements of Section 1(2) of this administrative regulation for the current renewal period;

(b) Verification of having obtained within two (2) years prior to the date of submission of the completed Renewal Application or Reinstatement Application:

1. Thirty (30) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(a)1, 2, and 3 and (c) for a physical therapist; or

2. Twenty (20) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(b)1, 2, and 3 and (c) for a

physical therapist assistant; ~~and~~

(c) Submission of payment of the reinstatement fee established in 201 KAR 22:135; ~~and~~[-]

(d) Effective May 1, 2018, submitting to the board a completed nationwide criminal background check as required by KRS 327.310 with the background check completed within[no later than] six (6) months prior to the date of the filing of the application.

(2) Continued competency hours submitted under subsection (1)(b) of this section for reinstatement shall satisfy the continued competency hours for the next renewal period as established in 201 KAR 22:045, Section 2(2) and (3).

Section 4. A credential holder who has a credential that has lapsed may, more than three (3) years of the lapsed date, reinstate upon:

(1) Meeting the requirements of Section 3 of this administrative regulation;

(2) Submission of all credentials from other jurisdictions since last renewal; and

(3) Completing the following requirements of the board if not holding a current credential from any other jurisdiction since last renewal:

(a) Submission of evidence of professional competency;

(b) An agreement to practice physical therapy under direct supervision not to exceed six (6) months;

(c) Successful completion of the board-approved examination;

or

(d) Any combination of paragraphs (a) through (c) of this subsection.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Renewal Application", July 2015; and

(b) "Reinstatement Application", July 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 14, 2017 at 1 p.m.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, (502) 429-7140, fax (502) 429-7142, ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stegner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200, fax (859) 392-7239, lkelly@aswdlaw.com.

**GENERAL GOVERNMENT CABINET  
Board of Physical Therapy  
(As Amended at ARRS, October 10, 2017)**

**201 KAR 22:070. Requirements for foreign-educated physical therapists.**

RELATES TO: KRS 327.050, 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3), 327.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall

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be credentialed if the applicant:

(1) Complies with the requirements of KRS 327.060(1)(b) ~~and~~;

(2) In accordance with KRS 327.060(1)(b), meets the following requirements:

(a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework ~~Evaluation~~ Tool" (CWT) copyrighted by the Federation of State Boards of Physical Therapy (FSBPT) for evaluation. An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

1. Completion of appropriate coursework at a regionally accredited academic institution;

2. Continuing education in a course approved by the board; or

3. Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;

(b) Shows proof of English Language Proficiency:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);

2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFLE Internet-based test (TOEFL iBT): Writing, twenty-two (22), Speaking, twenty-four (24), Listening, twenty-one (21), Reading, twenty-two (22); with an overall score of not less than eighty-nine (89); or

3. Verification that English is the native language of the country of origin.

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;

(d) Completes the Jurisprudence Exam;

(e) Obtains a passing score on the National Physical Therapy Examination (NPTE). The requirements of 201 KAR 22:020, Section 2(3) ~~and (4)~~ shall be applicable to examination candidates; and

(f) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be a minimum of 390 hours in a three (3) month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall furnish the board a favorable evaluation of on-site supervision performed by a clinical supervisor who utilizes the "Performance Evaluation Tool for Foreign Educated Therapists Completing a Supervised Clinical Practice in the United States" copyrighted by FSBPT. The clinical supervisor shall submit the evaluation to the board after three (3) months ~~of~~ practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as a clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days.

(3) Effective May 1, 2018, submits to the board a completed nationwide criminal background check as required by KRS 327.310 with the background check completed ~~within~~ no later than six (6) months prior to the date of the filing of the application.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(f) of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 1(2)(a) through (e) of this administrative regulation; and

(b) Submitted an approved ~~Supervisory~~ Agreement for

Physical Therapists Educated in a Foreign Country ~~and~~.

(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

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

(a) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country", ~~February, 2009~~ August 2017 ~~and~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: August 14, 2017.

FILED WITH LRC: August 14, 2017 at 1 p.m.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200, fax (859) 392-7239, lkelly@aswdlaw.com.

**GENERAL GOVERNMENT CABINET  
Board of Licensed Diabetes Educators  
(As Amended at ARRS, October 10, 2017)**

**201 KAR 45:071. Repeal of 201 KAR 45:070.**

RELATES TO: KRS 309.335(3), (4)

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS ~~309.325/309.330~~ to 309.339. The content of 201 KAR 45:070 is no longer necessary, as it only sets forth application procedures for licensure prior to July 1, 2014 and May 4, 2014 in accordance with KRS 309.335(3) and (4). The period for applications under those subsections has expired.

Section 1. 201 KAR 45:070, Application procedures for current practitioners, is repealed.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 15, 2017

FILED WITH LRC: August 15, 2017 at noon

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380, email matt.james@ky.gov.

**GENERAL GOVERNMENT CABINET  
Board of Licensed Diabetes Educators  
(As Amended at ARRS, October 10, 2017)**

**201 KAR 45:170. Application procedures.**

RELATES TO: KRS 309.331, 309.334, 309.335, 309.336, ~~335B.030~~

STATUTORY AUTHORITY: KRS 309.331(1), 309.334(2)(c), 309.335(1)(b)1., 309.336(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. KRS 309.335(1)(b)1. requires an applicant for licensure as a licensed diabetes educator to file an application as provided by the board, to show successful completion of a course or program as determined by the board, and to demonstrate

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experience in the care of people with diabetes under supervision that meets requirements specified in administrative regulations promulgated by the board. KRS 309.334(2)(c) requires the board to establish additional requirements to apply for an apprentice diabetes educator permit, and KRS 309.336(2)(b) requires the board to establish additional requirements to apply for licensure as a master licensed diabetes educator. This administrative regulation establishes application procedures for licensed diabetes educators, master licensed diabetes educators, and apprentice diabetes educators.

Section 1. Licensed Diabetes Educator Application Procedures. (1) An applicant for licensure as a licensed diabetes educator pursuant to KRS 309.335(1)(b)1. shall submit to the board:

(a) A completed Application for Licensure, Form DE-01, incorporated by reference in 201 KAR 45:110, including documentation verifying completion of 750 hours of work experience as an apprentice diabetes educator under a supervisor as provided in 201 KAR 45:110; and

(b) Payment of the licensure fee as established in 201 KAR 45:100.

(2) An applicant for licensure as a licensed diabetes educator pursuant to KRS 309.335(1)(b)2. shall submit to the board:

(a) Evidence showing ~~the~~ successful completion of the credentialing program of the American Association of Diabetes Educators or the National Certification Board for Diabetes Educators; and

(b) Payment of the licensure fee as established in 201 KAR 45:100.

(3) An applicant for licensure as a licensed diabetes educator pursuant to KRS 309.335(1)(b)3. shall submit to the board:

(a) Evidence showing the successful completion of an equivalent credentialing program; and

(b) Payment of the licensure fee as established in 201 KAR 45:100.

Section 2. Master Licensed Diabetes Educator Application Procedures. An applicant for licensure as a master licensed diabetes educator shall submit to the board:

(1) A completed Application for Licensure, Form DE-01;

(2) Proof of completion of the credentialing program of the American Association of Diabetes Educators or the National Certification Board for Diabetes Educators in Board Certified Advanced Diabetes Management or as a Certified Diabetes Educator; and

(3) Payment of the licensure fee as established in 201 KAR 45:100.

Section 3. Apprentice Diabetes Educator Application Procedures. An applicant for an apprentice diabetes educator permit shall submit to the board:

(1) A completed Application for Apprentice Diabetes Educator Permit, Form DE-03;

(2) Payment of the licensure fee as established in 201 KAR 45:100; and

(3) Proof of an active license or certification in good standing as at least one (1) of the following:

(a) American College of Sports Medicine Certified Clinical Exercise Specialist or Registered Clinical Exercise Physiologist;

(b)1. Certified social worker or licensed clinical social worker pursuant to KRS Chapter 335; and

2. The applicant shall also have at least two (2) years of experience in a health profession;

(c) Dietitian pursuant to KRS Chapter 310;

(d) Health educator holding active certification as a master certified health education specialist with the National Commission on Health Education Credentialing;

(e) Nutritionist pursuant to KRS Chapter 310;

(f) Occupational therapist pursuant to KRS Chapter 319A;

(g) Optometrist pursuant to KRS Chapter 320;

(h) Osteopath pursuant to KRS Chapter 311;

(i) Pharmacist pursuant to KRS Chapter 315;

(j) Physical therapist pursuant to KRS Chapter 327;

(k) Physician pursuant to KRS Chapter 311;

(l) Physician assistant pursuant to KRS Chapter 311;

(m) Podiatrist pursuant to KRS Chapter 311;

(n) Psychologist pursuant to KRS Chapter 319;

(o) Registered nurse pursuant to KRS Chapter 314; or

(p) A license or certification from a state or the District of Columbia equivalent to one (1) of the licenses or certifications listed in this subsection.

(4) The board shall not consider an applicant for an apprentice diabetes educator permit who does not hold an active license or certification as listed in subsection (3) of this section.

(5) An applicant for an apprentice diabetes educator permit shall include the Supervised Work Experience Report, Form DE-05, incorporated by reference in 201 KAR 45:110.

Section 4. Applications involving prior convictions of a crime.

(1) If the board considers denying an application based solely on an applicant's prior conviction of a crime, the board, pursuant to KRS 335B.030(2), shall:

(a) Provide the applicant with written notice that the board has determined that the prior conviction may disqualify the applicant for a license or permit, and demonstrates the connection between the prior conviction and the license or permit being sought; and

(b) Afford the applicant an opportunity to be personally heard before the board prior to the board making a decision on whether to disqualify the applicant.

(2) If the board resolves to deny an application based solely on an applicant's prior conviction of a crime after complying with the procedures in Section 4(1) of this administrative regulation, the board, pursuant to KRS 335B.030(2), shall notify the applicant in writing of:

(a) The grounds and reasons for the denial or disqualification;

(b) That the applicant has a right to a hearing conducted in accordance with KRS Chapter 13B, if a written request for a hearing is made within ten (10) days after service of notice;

(c) The earliest date the applicant may reapply for a license or permit; and

(d) That evidence of rehabilitation may be considered upon reapplication.

Section 5[4]. Incorporation by Reference. (1) "Application for Apprentice Diabetes Educator Permit", Form DE-03, 08/2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: August 15, 2017

FILED WITH LRC: August 15, 2017 at noon

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380, email matt.james@ky.gov.

**ENERGY AND ENVIRONMENT CABINET**  
**Department for Natural Resources**  
**Division of Forestry**  
**(As Amended at ARRS, October 10, 2017)**

**402 KAR 3:010. Timber sales.**

RELATES TO: KRS 149.010, 149.020

STATUTORY AUTHORITY: KRS 149.010(2), 149.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.010(2) requires the director of the Division of Forestry, with the approval of the Secretary of the Energy and Environment Cabinet, to promulgate administrative regulations necessary to carry out the functions assigned to the cabinet. 149.020 authorizes the cabinet to receive by

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donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products thereon. This administrative regulation establishes the requirements of major and minor timber sales.

Section 1. Definitions. (1) "Director" means the director of the Division of Forestry.

(2) "Major timber sales" means sales of merchantable timber with a return of \$25,000 or more in cash receipts to the Division of Forestry.

(3) "Minor timber sales" means sales of merchantable timber with a return of less than \$25,000 in cash receipts to the Division of Forestry.

Section 2. Major Timber Sales from State Forests. Timber may be harvested from a state forest for sale pursuant to KRS 149.020 ~~[and shall comply with Major Timber Sales on state forest property, Forestry Guideline Memorandum 14-04]~~. Major timber sales shall be conducted in accordance with the requirements of this section.

(1) Advertisement.

(a) The Division of Forestry shall mail a timber sale packet to each prospective buyer a minimum of three (3) weeks before bid opening. The sale shall be advertised at least one (1) time in three (3) local newspapers or three times (3) in one (1) local newspaper.

(b) A timber sale packet shall be prepared for each sale and shall include a:

1. Timber Sale Prospectus, including pertinent details of the sale;

2. ~~[Form SF-4,]~~ Bid for advertised timber;

3. Summary of Timber Marked if the trees are individually designated, or a Cruise Summary if it is a boundary sale;

4. ~~[Form SF-3,]~~ Timber Sale Contract;

5. Map of the sale area; and

6. Self-addressed sealed bid envelope.

(2) Contract.

(a) Timber shall be sold by written timber sales contract. The terms shall be adequate in the judgment of the director~~[,]~~ to protect the interests of the Commonwealth.

1. The timber sale contract shall be awarded immediately after bid opening.

2. Full payment for the timber sold shall be submitted within five (5) working days of awarding the contract.

(b) A certified check, made payable to Kentucky State Treasurer in an amount not less than \$2,500 or more than ten (10) percent of the established minimum bid, shall be required as a sign of good faith to accompany each bid.

1. The bid shall be considered as part of the total sale price of the successful bidder.

2. Deposits of unsuccessful bidders shall be returned.

(c) As a guarantee of the performance of the terms of the contract, the successful bidder shall, within five (5) days of the date of the contract, deposit with the Division of Forestry a certified check as performance bond in the amount of not more than ten (10) percent of the established minimum bid, but not less than \$2,500.

1. In lieu of the posting of the certified check as a performance bond, the successful bidder may post a surety bond with surety satisfactory to the Division of Forestry.

2. The bond shall be held until the completion of the terms of the contract.

(3) Compliance.

(a) The timber purchaser shall be required to comply with all timber sale contract requirements.

1. During ongoing harvesting activities, the operation shall be inspected by the local state forest administrator at least once every two (2) weeks to access compliance and to be available to answer any questions the purchaser may have.

2. If the purchaser is found in non-compliance with the contract, then the purchaser shall be informed and told what corrective measures shall be taken.

(b) The timber purchaser shall be required to maintain compliance with best management practices pursuant to 402 KAR 3:030.

(c) If the purchaser fails or refuses to comply with the direction given by the state forest administrator, then the operation shall be suspended or terminated in accordance with the timber sale contract.

(d)[(e)] Upon satisfactory completion of all terms of the contract and payment of any damages incurred, the Division of Forestry shall release the purchaser's performance bond.

(4) Minimum Bid. A minimum acceptable bid shall be determined for each sale and shall be stated as a part of the timber sale packet advertisement.

(a) A guide for determining the minimum bid shall be calculated by indexing the current price of No. 1 common lumber for each species, multiplying by the general profit or risk percentage and commission for industry in the particular area of the sale, and subtracting average logging, milling and drying cost.

(b) The price of No. 2 common lumber may be substituted for No. 1 common lumber on low quality species.

(c) The director may adjust the minimum bid established in subsection (4) of this section, as necessary, based on the director's professional knowledge, general market conditions in the local area, and the special characteristic of the individual sale.~~[This calculation may be altered in accordance with direction given in the Major Timber Sales on state forest property, Forestry Guideline Memorandum 14-04].~~

(5) Negotiated Sale. If bids are not received on an advertised tract of timber, the Division of Forestry, with the approval of the director, may negotiate the sale of the tract of timber if it is judged in the best interest of the Division of Forestry and the Commonwealth.

(a) Negotiated sales shall be for no less than the minimum bid.

(b) The contract shall be executed within six (6) months of the bid opening date.

Section 3. Minor Timber Sales from State Forests. (1) Timber may be harvested from a state forest for sale pursuant to KRS 149.020~~[and Minor Timber Sales on state forest property, Forestry Guideline Memorandum 14-02]~~. Minor timber sales shall require:

(a) A performance bond of \$500 or five (5) percent of the winning bid amount, whichever is greater;~~[and]~~

(b) Full payment for products and performance bonds, if necessary, to be made within five (5) working days of execution of the permit; and

(c) The timber purchaser to maintain compliance with best management practices pursuant to 402 KAR 3:030.

(2) A potential buyer~~[buyers]~~ for minor timber sales shall notify the division~~[submit Form SF-2, Timber Sale Permit,]~~ and the sales shall be carried out under the supervision of the Division of Forestry.

(3) If time is insufficient, harvest or salvage operations in preparation for land use change as approved by the director of the Division of Forestry may exceed the \$25,000 maximum limitation. ~~[Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Major Timber Sales on state forest property", Forestry Guideline Memorandum 14-01, July 24, 2014;~~

~~(b) "Minor Timber Sales on state forest property", Forestry Guideline Memorandum 14-02, July 24, 2014;~~

~~(c) "Free removal of Forest Products on state forests", Forestry Guideline Memorandum 14-03, July 24, 2014;~~

~~(d) "Rural Community Fire Protection", Forestry Guideline Memorandum 14-04, August 4, 2014;~~

~~(e) "Timber Sale Permit", SF-2, November 2009;~~

~~(f) "Timber Sale Contract", SF-3, November 2009; and~~

~~(g) "Bid for Advertised Timber", SF-4, November 2009.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Forestry, 627 Comanche Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 14, 2017

FILED WITH LRC: August 15, 2017 at 9 a.m.

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



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JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(As Amended at ARRS, October 10, 2017)

501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439  
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Roederer Correctional Complex.

Section 1. Incorporation by Reference. (1) "Roederer Correctional Complex policies and procedures", October 10/June 28/2017 [August 4, 2016], are incorporated by reference. Roederer Correctional Complex policies and procedures include:

- RCC 01-08-01 Public Information and News Media Access (Amended 05/15/12)
- RCC 02-02-02 Inmate Personal Funds (Amended 6/28/17[05/15/12])
- RCC 02-02-05 Inmate Canteen Services (Amended 6/28/17 [05/15/12])
- RCC 05-02-01 Consultants, Research, and Student Interns (Added 5/15/12)
- RCC 06-03-01 Records Release of Information (Amended 05/15/12)
- RCC 08-01-01 Fire Prevention (Amended 7/26/13)
- RCC 09-08-01 Operation of a Licensed Vehicle by an Inmate (Added 05/15/12)
- RCC 09-10-01 Fishing At Roederer Correctional Complex Lakes (Amended 6/28/17[05/15/14])
- RCC 09-29-01 Tobacco and Smoke Free Environment (Amended 8/4/16)
- RCC 09-31-01 Firewood Cutting and Firewood Sales (Added 8/4/16)
- RCC 10-01-02 Temporary Holding Cell[Guidelines] (Amended 6/28/17[7/8/14])
- RCC 11-01-01 Food Service (Amended 6/28/17[6/14/16])
- RCC 11-04-01 Food Service: Meals, Storage, Menu Nutrition and Alternative Items (Amended 6/14/16)
- RCC 11-05-02 Sanitation and Health Requirements of Food Handlers (Amended 6/28/17[05/15/12])
- RCC 12-01-01 Sanitation, Living Conditions and Clothing Issuance (Amended 6/28/17[05/15/12])
- RCC 12-01-02 Bed Areas (Amended 7/8/14)
- RCC 12-01-03 General Guidelines for Living Units (Amended 7/8/14)
- RCC 12-02-01 Laundry Services (Amended 6/14/16)
- RCC 12-03-01 Personal Hygiene Items: Issuance and Replacement Schedule (Amended 6/28/17[05/15/12])
- RCC 12-03-02 Barber Shop Services and Equipment Control (Amended 05/15/14)
- RCC 12-07-01 Treatment of Inmates with Body Lice (Added 05/15/12)
- RCC 13-02-01 Health Maintenance Services: Sick Call and Pill Call (Amended 10/10/17[6/28/17][05/15/14])
- RCC 13-03-01 Dental Procedures and Sick Call (Amended 6/28/17[6/14/16])
- RCC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate Medical Records (Amended 05/15/12)
- RCC 13-06-03 Emergency Medical and Dental Care Services (Amended 6/28/17[05/15/14])
- RCC 13-07-03 Use of Pharmaceutical Products (Amended 10/10/17[6/28/17][05/15/14])
- RCC 13-07-04 Self-Administered Medication Program (Amended

- 7/26/13)
- RCC 13-09-01 Notification[of an Inmate's Family] Due to Serious Illness, Surgery, or Death (Amended 6/28/17[05/15/12])
- RCC 13-10-01 Health Education and Special Health Programs (Amended 05/15/12)
- RCC 13-11-01 Informed Consent (Amended 05/15/12)
- RCC 13-13-01 Identification and Transfer Procedures for Inmates with Psychological, Psychiatric, or Severe Medical Disabilities (Amended 8/4/16)
- RCC 13-16-01 Specialized Health Services (Amended 7/8/14)
- RCC 13-18-01 Infection Control (Amended 05/15/12)
- RCC 13-19-01 Medical Waste Management (Amended 05/15/12)
- RCC 13-20-01 Medical Services Co-pay (Amended 05/15/12)
- RCC 13-21-01 Mental Health Services (Amended 6/14/16)
- RCC 13-24-01 Substance Abuse and Chemical Dependency Program (Amended 6/28/17[6/14/16])
- RCC 14-01-01 Inmate Rights and Responsibilities (Amended 6/14/16)
- RCC 14-02-01 Legal Services Program (Amended 6/28/17[05/15/12])
- RCC 14-03-01 Marriage of Inmates (Amended 05/15/12)
- RCC 14-05-01 Americans with Disabilities Act and Inmate Program Access (Amended 10/10/17[6/28/17][Added 6/14/16])
- RCC 16-01-01 Inmate Visiting (Amended 6/28/17[6/14/16])
- RCC 16-01-02 Restricted Visitation (Amended 8/4/16)
- RCC 16-02-01 Telephone Communications (Amended 6/14/16)
- RCC 16-03-01 Mail Regulations (Amended 10/10/17[6/28/17][8/4/16])
- RCC 16-04-01 Parole Hearings: Media and Visitors (~~Amended~~[Added] 6/28/17[7/26/13])
- RCC 17-01-01 Assessment and Orientation Procedure for Intra-system Transfers (Amended 6/14/16)
- RCC 17-01-02 Identification Department Admission and Discharge Procedures (Amended 6/28/17[8/4/16])
- RCC 17-05-05 Assessment Center Operations and Reception Program (Amended 6/14/16)
- RCC 18-01-01 Classification (Amended 6/28/17[6/14/16])
- RCC 19-01-01 Job and Program Assignments (Amended 6/28/17[6/14/16])
- RCC 20-01-01 Education Program (Amended 10/10/17[6/28/17][6/14/16])
- RCC 20-01-03 Vocational Horticulture Program (Amended 6/14/16)
- RCC 21-01-01 Library Services (Amended 6/14/16)
- RCC 22-01-01 Recreation and Inmate Activities (Amended 10/10/17[6/28/17][05/15/12])
- RCC 22-03-01 Inmate Clubs and Organizations (Amended 6/28/17[6/14/16]) [RCC 22-03-02 Alcohol Anonymous and Narcotics Anonymous Club Sponsored Picture Project (Amended 6/14/16)]
- RCC 22-04-01 Arts and Crafts Program (Amended 6/28/17[6/14/16])
- RCC 23-01-01 Religious Services (Amended 6/28/17[6/14/16])
- RCC 24-01-01 Social Services and Counseling (Amended 6/28/17[6/14/16])
- RCC 25-01-01 Furloughs (Amended 05/15/12)
- RCC 25-05-01 Inmate Discharge Procedure (Amended 6/28/17[6/14/16])
- RCC 26-01-01 Citizens Involvement and Volunteer Services Program (Amended 6/28/17[8/4/16])

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

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: June 12, 2017

FILED WITH LRC: June 28, 2017 at 2 p.m.

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, October 10, 2017)

**702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.**

RELATES TO: KRS 61.805 - 61.850, 156.070(2), 160.380, 160.445, 20 U.S.C. 1681

STATUTORY AUTHORITY: KRS 156.070(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools, including interscholastic athletics in the schools. KRS 156.070(2) authorizes the board to designate an agency to manage athletics. This administrative regulation designates an agent for middle and high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures, and rules of the agent.

Section 1. Definitions. (1) "Contact" means that drills are run at Level 3, thud, or Level 4, live action.

(2) "KBE" means Kentucky Board of Education.

(3) "KHSAA" means Kentucky High School Athletics Association.

(4) "Level 0" or "air" means that players run a drill unopposed and without contact.

(5) "Level 1" or "bags" means that a drill is run against a bag or another soft contact surface.

(6) "Level 2" or "control" means that a drill is run at the assigned speed until the moment of contact; one (1) player is predetermined the winner by the coach; contact remains above the waist; and players stay on their feet.

(7) "Level 3" or "thud" means that a drill is run at the assigned speed through the moment of contact; there is not a predetermined winner; contact remains above the waist; players stay on their feet; and a quick whistle ends the drill.

(8) "Level 4" or "live action" means that a drill is run in game-like conditions and is the only time that players are taken to the ground.

(9) "Non-contact" means that drills are run at Level 0, air; Level 1, bags; or Level 2, control.

(10) "OCR" means Office for Civil Rights.

Section 2. The KHSAA shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the middle and high school level in the common schools, including a private school desiring to associate with KHSAA or to compete with a common school.

Section 3. To remain eligible to maintain the designation as the agent to manage interscholastic high school athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its high school Board of Control;

(2) Sponsor an annual meeting of its member high schools;

(3) Provide for each member high school to have a vote on KHSAA constitution and bylaw changes submitted for consideration;

(4) Provide for high school regional postseason tournament net revenues to be distributed to the member high schools in that region participating in that sport, utilizing a share approach determined by the high schools within that region playing that sport;

(5) Provide for students desiring to participate at the high school level (regardless of level of play) to be enrolled in at least grade seven (7) unless the student has participated at the high school level prior to the 2014 - 2015 school year;

(6) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by December 31;

(7) Advise the Department of Education of all legal action

brought against the KHSAA;

(8) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(9) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(10) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(11) Permit the Board of Control to assess fines on a member high school;

(12) Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility appeal;

(13) Establish a philosophical statement of principles to use as a guide in a high school eligibility case;

(14) Conduct continual cycles of field audits of the association's entire high school membership which provides that each high school is audited regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports, including the highlighting of any potential deficiencies in OCR compliance to the Kentucky Board of Education;

(15) As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

(16) Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;

(17) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, KHSAA Bylaws, and other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public; **[and]**

(18) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility; **and**

(19) Require any student enrolled initially in grade seven (7) through twelve (12) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in interscholastic athletics competition at any level.

Section 4. To remain eligible to maintain the designation as the agent to manage interscholastic athletics at the middle school level, the KHSAA shall implement the following requirements for all participants in middle school interscholastic athletics, distribute these requirements to all middle schools, and publish via the KHSAA Web site:

(1) Require that these provisions apply to all middle school interscholastic athletics. The following indicates that a team is representative of a school and classified as middle school athletics:

(a) The contest, event, or tournament is sponsored by a school or combined group of schools;

(b) Competitors wear a school issued uniform;

(c) The contest, event, or tournament is sponsored by an outside entity as a school entry event, which is advertised or promoted as a school event, whether or not an entry fee is required;

(d) A school entity pays an entry fee, for the student or team, including payment by booster organizations;

(e) A school representative accompanies the student-athlete or transports the student-athlete to the contest, event, or tournament;

(f) A designated or hired member of a school coaching staff, whether paid or unpaid, is present and offering instruction, advice, evaluation, or refinement of skills or exercising other duties defined as coaching within the sport rules;

(g) Transportation to or from the contest, event, or tournament utilizes school provided or approved transportation;

(h) Competitors in the contest, event, or tournament wear apparel identifying them by the name of the school, including the formal name, informal name, or team nickname;

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(i) Competitors in the contest, event, or tournament are provided promotional or other resources by the school including school media recognition, signage, and items clearly indicative of school representation;

(j) Competition in a contest, event, or tournament has, in any form, jurisdiction of the local school board or school based decision making body, including financial or other approval control; or

(k) Competition in a contest, event, or tournament is covered by any school or school system provided or procured insurance policy;

(2) Require that any head or assistant coach, whether paid or unpaid, desiring to coach interscholastic athletics at the middle school level:

(a) Meet the requirements of KRS 156.070(2)(f)2.;

(b) Meet the requirements of KRS 160.380(4) and (6); and

(c) Provide to the school documentation of successful completion of a C.P.R. course including the use of an automatic external defibrillator and the first aid training, conducted by an instructor or program approved by a college or university, the American Red Cross, the American Heart Association, or other bona fide accrediting agency that is approved by the KHSAA based upon industry standards. Initial certification shall use in-person instruction and certification shall be updated as required by the approving agency;

(3) Require the adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:

(a) Each student, prior to trying for a place on a middle school athletic team, shall provide an annual medical examination, in accordance with KRS 156.070(2)(d), and shall use the KHSAA form PPE;

(b) All participants at the middle school level shall adhere to all sports medicine and risk minimization policies in use at the high school level that may be supplemented by the school, school district, conference, or association including:

1. Heat index and heat illness programs;

2. Wrestling weight management programs;

3. Concussion and other head injury policies including policies for minimizing impact exposure and concussion risks;

4. The following football drill work and practice activity limitations:

a. Football contact and non-contact practice shall use the appropriate clothing and equipment for the level of drill, including:

(i) A drill conducted in helmets-only shall be a Level 0, air, or Level 1, bags;

(ii) A drill conducted in shells (shorts, shoulder pads, and helmets) shall be a non-contact drill; and

(iii) A contact drill shall be conducted in full equipment;

b. Middle school football shall practice a minimum of eleven (11) days before engaging another group or opponent in full contact, using the following minimum schedule:

(i) Five (5) days in helmets;

(ii) Followed by three (3) days in helmets and shoulder pads; and

(iii) Concluding with three (3) days in full equipment practice; and

c. Contact drills shall not be conducted more than twenty-one (21) days before the first regular season contest; ~~and~~

5. The following baseball pitching limitations shall apply to all interscholastic play at the middle school level including scrimmages, regular season and post season games:

a. The pitch count shall be [is] based on pitches thrown for strikes (including foul balls), balls, balls in play, and outs;

b. Warm-up pitches allowed before each inning, warm-up pitches allowed by the umpire in case of injury or game delay, and plays attempted against the batter-runner or any runner at first, second, or third base shall [do] not count against this limit;

c. A pitcher at any level who reaches the pitch count limit in the middle of an at-bat shall [will] be allowed to finish that hitter;

d. The required calendar rest shall begin [begins] on the day following the date on which the game began or a resumed game began regardless of the conclusion time of the game; and

e. The rest periods shall be based on the following total

pitches [required]:

(i) Maximum pitches – eighty-five (85);

(ii) Fifty-six (56) pitches or more – three (3) calendar days rest;

(iii) Thirty-six (36) to fifty-five (55) pitches – two (2) calendar days rest;

(iv) Twenty (20) to thirty-five (35) pitches – one (1) calendar day rest; and

(v) One (1) to nineteen (19) pitches – no mandated rest;

6. Students seeking to play or practice, including scrimmages, regular season and post season games, in the sport of fastpitch softball, shall be required to wear face protection, commercially manufactured for softball facial protection and worn as intended by the manufacturer, when playing the positions of first base, third base, and pitcher; and

~~7. [Beginning with the 2017-2018 school year,] Teams participating in middle school athletics as defined by subsection (1) of this section shall use KHSAA licensed officials in the sports of baseball, basketball, field hockey, football, soccer, softball, and volleyball;~~

(4) Create a permanent Middle School Athletics Advisory Committee. This committee shall:

(a) Be autonomous with respect to the Board of Control of the KHSAA;

(b) Be composed of no less than three (3) middle school representatives from each Supreme Court district as well as no less than three (3) at large representatives from throughout the state;

(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletes involved in interscholastic activities through local school districts;

(d) Meet not less than twice annually to review current programs and policies; make recommendations for improvements to and participation in middle school interscholastic activities, as well as any changes in statute, administrative regulation, or policy related to middle school interscholastic athletics; and assist in the development of model guidelines for schools, districts, conferences, and associations to be used in implementing a middle school athletic program; and

(e) Report regularly, not less than annually, to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the KBE with recommendations for changes in statute, administrative regulation, or policy;

(5) Require any organization conducting a school based event at the middle school level to submit the following, which shall be published and listed on the KHSAA Web site:

(a) Annual financial reports of all sanctioned and approved events sponsored by the organization; and

(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;

(6) Provide notice to the middle schools related to any program conducted by KHSAA related to educating school administrators about the provisions of 20 U.S.C. 1681, Title IX;

(7) Provide educational materials and a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445 and other requirements for coaches at the middle school level;

(8) Require any student enrolled initially in grade five (5) through eight (8) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in interscholastic athletics competition at any level [involving students enrolled in grades six (6) through eight (8)];

(9) Require that any student who turns:

(a) Fifteen (15) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades eight (8) and below;

(b) Fourteen (14) years of age prior to August 1 of the current year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades seven (7) and below; and

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(c) Thirteen (13) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades six (6) and below;

(10) Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation at the middle school level to include:

(a) A defined age limitation for participating students;

(b) A policy regarding the participation of students below grade six (6);

(c) A limitation on practice time prior to the season in any sport or sport activity which shall not exceed the practice time adopted for play at the high school level;

(d) A limitation on the number of school based scrimmages and regular season, school based contests in each sport or sport-activity, which shall not include post season contests and shall not exceed the allowable number of contests for that sport or sport-activity at the high school level; and

(e) A limitation on the length of the regular competitive season in each sport or sport-activity, not including any post season activities, which shall not exceed the length for that sport or sport-activity at the high school level;

(11) Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850;

(12) Issue an annual report to the KBE on the status of interscholastic athletics at the middle school level, including any recommendations for changes in statute, administrative regulation, or policy;

(13) Allow a school or school district to join a conference or association that has developed rules for any particular sport or sport-activity to satisfy the requirements of this administrative regulation; and

(14) ~~Beginning in June 2017,~~ The period of June 25 to July 9, inclusive, shall be a dead period for middle school athletics. During the dead period:

(a) Students shall not receive coaching or training from school personnel, whether salaried or non-salaried;

(b) School facilities, uniforms, nicknames, transportation, or equipment shall not be used;

(c) School funds shall not be expended in support of interscholastic athletics; and

(d) A postseason wrap-up activity, celebration, or recognition event relating to a spring sports team at a school may be held.

Section 5. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition, including the name of the individual, grade, school, and the action taken by KHSAA;

2. Eligibility rules;

3. Duties of school officials;

4. Contests and contest limitations;

5. Requirements for officials and coaches; and

6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control, audited financial statements with the KHSAA

Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KHSAA Constitution", 6/2017[6/2013];

(b) "KHSAA Bylaws", 6/2017[9/2016];

(c) "KHSAA Due Process Procedure", 6/2017[6/2014];

(d) "KHSAA Board of Control and Officials Division Policies", 6/2017[6/2016];

(e) KHSAA Form BA101- Baseball Pitching Limitation", 6/2016;

(f) KHSAA Form GE01, "Application for Renewal of Membership", 5/2017[5/2015]; ~~[(g) KHSAA Form GE02, "Application for New Membership", 6/2017 5/2015];~~

~~[(g)]~~[(h)] KHSAA Form GE04, "Athletic Participation Form, Parental and Student Consent and Release for High School Level (grades 9 - 12) Participation", 4/2015;

~~[(h)]~~[(i)] KHSAA Form DP06[GE06], "Application for Athletic Eligibility for Domestic Students[Transfer Form— Citizens of the U.S. or U.S. Territories]", 8/2017[9/2016];

~~[(i)]~~[(j)] KHSAA Form DP07[GE07], "Application for Athletic Eligibility for Students having J-1 or F-1 Status[Foreign Exchange Student (Non-Domestic) Eligibility]", 8/2017[6/2016];

~~[(j)]~~[(k)] KHSAA Form DP08[GE08], "Application for Non U.S. Student Athletic Eligibility for Students Not having J-1/F-1 Status [Foreign Student, Non-Exchange (Non-Domestic) Eligibility]", 8/2017 [6/2016];

~~[(k)]~~[(l)] KHSAA Form GE14- Contract for Athletic Contests", 8/2017[4/2014];

~~[(l)]~~[(m)] KHSAA Form GE16, "Request for Statutory Waiver of Bylaw 2", 6/2016;

~~[(m)]~~[(n)] KHSAA Form GE19-Title IX Procedures Verification", 5/2011;

~~[(n)]~~[(o)] KHSAA Form GE20, "Heat Index Measurement and Record", 4/2014;

~~[(o)]~~[(p)] KHSAA Form GE35, "Request for Waiver of 20 Day Notice", 4/2014;

~~[(p)]~~[(q)] KHSAA Form GE36- Add. Info for Appeal", 6/2016;

~~[(q)]~~[(r)] KHSAA Form GE69- Waiver – 15 Day Exceptions", 6/2016;

~~[(r)]~~[(s)] KHSAA Form PPE/Physical Exam, "PPE- Physical Exam History/Physician Clearance Form (Grades 6 - 12)", 4/2015;

~~[(s)]~~[(t)] KHSAA Form PPE/Supplemental, "PPE- Physical Exam History Supplemental Form for Athletes With Special Needs (Grades 6 - 12)", 4/2015;

and

~~[(t)]~~[(u)] KHSAA Form MS01- Athletic Participation Parental and Student Consent and Release for Middle School (grades 5-8) Participation", 4/2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal, Legislative and Communication Services~~[Office of Legal and Legislative Services]~~, Department of Education, 5th Floor, 300 Sower Blvd~~[First Floor, Capital Plaza Tower]~~, 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).

STEPHEN L. PRUITT, Ph.D., Commissioner of Education

MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: August 15, 2017

FILED WITH LRC: August 15, 2017 at noon

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Office of Guiding Support Services, Kentucky Department of Education, 300 Sower Blvd., Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE  
SYSTEM

Governor's Commission on Fire Protection  
Personnel Standards and Education  
(As Amended at ARRS, October 10, 2017)

739 KAR 2:050. Volunteer fire department aid.

RELATES TO: KRS 75.400, 75.410, 75.440, 95A.210, 95A.262, 136.392

STATUTORY AUTHORITY: KRS 95A.262(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~95A.262(2)~~(95-262(2)) requires the Commission on Fire Protection Personnel Standards and Education to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment. This administrative regulation establishes the requirements for volunteer fire department aid.

Section 1. Definition~~[Definitions]~~.~~[(1) "Certified training" means firefighter training given or verified by an instructor certified pursuant to 739 KAR 2:060 and recorded by the commission.~~

~~(2) "Certified volunteer firefighter" means an individual who has received at least 150 hours of certified training and who receives at least twenty (20) hours of certified training annually.~~

~~(3) "Commission" is defined by KRS 95A.210(1).~~

~~(4) "Fire apparatus" means a motorized vehicle specifically designed to perform firefighting operations, with a minimum rated pump capacity of 750 gallons per minute (gpm), and which met or meets the associated National Fire Protection Association (NFPA) standard at the time of manufacture [equipped with a pump having a minimum capacity of pumping 250 gallons per minute and with sufficient space to carry fire hose and other fire suppression equipment.~~

~~(5) "Newly formed fire department" means a fire department which meets the requirements established in KRS 95A.262(2) for a qualifying department.~~

~~(6) "Volunteer fire department" is defined in KRS 75.400(5).~~

Section 2. Eligibility. (1) To qualify ~~for~~to receive volunteer fire department aid, a volunteer fire department shall meet the requirements established in KRS 95A.262 and submit to the commission proof of the required annual twenty (20) hours of recognized training for each firefighter by December 31~~[this administrative regulation]~~.

~~(2) Even if all volunteer firefighters have not yet become certified volunteer firefighters, as defined by 739 KAR 2:060, a new fire department shall be eligible for aid if the fire department has:~~

~~(a) Been recognized by the commission;~~

~~(b) Been established for less than two (2) years;~~

~~(c) A staff consisting of at least fifty (50) percent certified volunteer firefighters; and~~

~~(d) Twelve (12) or more firefighters and a chief who~~[that]~~ have not qualified another fire department for volunteer department aid [A newly formed fire department applying to be recognized by the commission for funding and benefits shall have twelve (12) firefighters and a chief that are not qualifying another fire department for volunteer fire department aid.~~

~~(3) A fire department or other eligible entity requesting aid shall provide proof of purchase expenditures for the previous year's aid. The proof shall be submitted by June 30 of each year on form KSA-2, Proof of Purchase.~~

~~(4) Certification of personnel shall be determined from Form KFS-2, Firefighter Application, which shall be submitted to the commission regarding the active or inactive status of an existing member, the departure of a member, or the entry of a new member.]~~

Section 3. Applying for Aid.~~[Participation Requirement. (1) The chief officer or the~~[his]~~ appointed representative of the department shall submit a Volunteer Fire Department State-Aid Application.]~~furnish the information required by the commission for determination of eligibility.

~~(2) All training hours for the department for the previous twelve (12) months shall be submitted by December 31.~~

~~(3) A volunteer fire department seeking aid pursuant to KRS 95A.262 shall submit to the commission a completed:~~

~~(a) Form KSA-1, Fire Department Information; and~~

~~(b) Form KFS-3, Fire Department Application.]~~

Section 4. Eligible Items and Report of Purchase. (1) Funds may be used:

(a) To purchase items such as firefighting and special operations equipment;

(b) To purchase,~~[~~ fire apparatus;

(c) To purchase,~~[~~ a fire station; or

(d) Funds may also be used~~[~~ For the maintenance or repair of a fire station.]Purposes for which Volunteer Aid May be Used.

~~(1) An approved equipment list of items which may be purchased with volunteer fire department aid pursuant to KRS 95A.262 and this administrative regulation shall be supplied with each check.]~~

~~(2)(a) Funds shall not be expended for ineligible items unless the commission [staff] receives a written request from the chief explaining the need for the items and the request is approved by the commission staff, in accordance with [subsection 4 of] this section.~~

~~(b) If the request is denied and the volunteer department does not desire to use the funds for approved items, the allotment shall be refunded to the commission [staff] an item not on the approved list unless written permission to spend the funds for other purposes is granted by the commission and fire department aid administrator pursuant to Section 5 of this administrative regulation.]~~

~~(3) Each fire department receiving aid shall submit the State-Aid Report of Purchase form to the commission staff by July 31 of the following year the aid was granted. Failure to do so shall disqualify the department from receiving aid the following year.~~

~~(a) [Proof of purchase shall be:~~

~~(a) Submitted in the form of an invoice and cancelled check;~~

~~(b) Recorded on Form KSA-2, Proof of Purchase; and~~

~~(c) Submitted to the commission.~~

~~(4) Proof of purchase documentation shall be returned by June 30 of the year following receipt of the check.~~

~~(5) The commission or its designee may make an inspection of the applicant's fire department to determine comparative needs within the department before making the allotment.~~

~~(b) The inspection may include an accounting to assure that equipment previously purchased is currently in the possession of the fire department.~~

Section 5. Holding of Funds~~[Processing Applications for and Expenditure of Aid]. (1)(a) If the approved allotment is insufficient to cover the cost of equipment or other approved purpose, the full aid [funds] granted for a fiscal year may be held by the fire department [deposited in a bank authorized by the applicant to be held] for a period not to exceed five (5) years from the initial granting of funds [request].~~

~~(b) If the funds will be held [additional time beyond the five (5) years is needed], a written explanation for the holding request shall be submitted [made] to the commission upon receiving the funds [giving reasons why additional time is needed].~~

~~(c) The funds shall be held in a special and separate bank account marked "Fire Department Aid Fund."~~

~~(2)(a) Upon the expenditure of funds, [if an allotment is granted to a fire department and is to be used for the purchase of equipment other than that listed on the approved equipment list or for another purpose,] the chief or appointed representative shall submit the State-Aid~~[Purchase] Report of Purchase to the commission.~~ [of the fire department shall:~~

~~(a) Request, in writing, permission to use the allotment for other equipment or purposes; or~~

~~(b) Refund the grant-in-aid allotment.~~

~~(3) The amount expended for a firefighter to attend a fire-related school or class shall:~~

~~(a) Not exceed ten (10) percent of the aid amount allotted for that fire department; and~~

~~(b) Be listed on Form KSA-2, Proof of Purchase, with receipts.~~

~~(4) If expenditure is made of an allotted fund, copies of~~

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received bills shall be forwarded by the volunteer fire department aid coordinator to the commission.]

(b) If the funds are [grant is to be] used toward the retirement of a preexisting debt for purchase of land, buildings, or equipment, proof of the expenditure in the form of an affidavit or cancelled note shall be submitted [furnished] to the commission.

(c) An applicant who knowingly makes a false statement regarding volunteer fire department aid shall subject the grant to refund and prosecution for fraud [A false statement made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes].

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Fire Department Information, Form KSA-1, July 14, 1998;

(b) Firefighter Application, Form KFS-2, July 14, 1998;

(c) Volunteer Fire Department State-Aid Application 8/2017 [Form KFS-3, July 14, 1998]; and

(b) [(d)] State-Aid Report [Proof] of Purchase, 8/2017 [Form KSA-2, July 14, 1998].

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Commission on Fire Protection Personnel Standards and Education, 118 James Court, Lexington, Kentucky 40505, [1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40604,] Monday through Friday, 8 a.m. to 4:30 p.m.

RONNIE DAY, Executive Director

APPROVED BY AGENCY: July 26, 2017

FILED WITH LRC: August 9, 2017 at 2 p.m.

CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Fire Commission; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 281-6480, email aeavans@mmlk.com.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, October 10, 2017)

780 KAR 3:072. Attendance, compensatory time, and leave for certified and equivalent service.

RELATES TO: KRS 156.808 [154B-035], Chapter 337, 29 C.F.R. 825, 29 U.S.C. 201-219

STATUTORY AUTHORITY: KRS 156.808 [154B-035] (3)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808 [154B-035] requires the Kentucky Board of Education [Executive Director for the Office of Career and Technical Education] to promulgate [comprehensive] administrative regulations consistent with the provisions of KRS 156.800 to 156.860 [156.808] [154B-035]. KRS 156.808 [154B-035] (3)(g) requires [specifies that] the Kentucky Board of Education [executive director] to [shall] promulgate [comprehensive] administrative regulations for the certified and equivalent staff of state-operated area technology centers governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leaves of absence. The Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq., as implemented by 29 C.F.R. Part 825, requires the granting of family and medical leave. This administrative regulation establishes those leave requirements.

Section 1. Attendance. (1) A full-time employee shall be required to work thirty-seven and one-half (37.5) [(37-1/2)] hours per week for any positions unless otherwise specified by the appointing authority.

(2) The normal work day for a school-based employee shall coincide with the appropriate school schedule as recommended by the principal and approved by the associate commissioner for career and technical education [executive director].

(3) The associate commissioner for career and technical

education [executive director] may require an employee to work hours and work days other than the normal schedule including an inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works within a [school or] division which requires more than one (1) shift or seven (7) days a week operation may be reassigned from one (1) shift to another and from one (1) post to another or alternate days to meet staffing requirements, or to maintain or provide essential services of the agency, or to meet scheduling needs of students. An employee shall be given as much advance notice as possible when schedules are changed.

(5) The employee shall give reasonable notice in advance of absence from a work station.

(6) An employee may [shall] be allowed up to two (2) professional days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.

Section 2. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

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

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

(c) An employee, except teachers and principals, deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours actually worked in excess of the regular work schedule. Teachers and principals shall not accumulate compensatory time.

(d) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be paid for all hours worked in excess of forty (40) hours per week.

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

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 200 hours.

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

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has a balance of at least 100 hours compensatory leave to use compensatory leave before annual leave, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under Section 3(2)(f) of this administrative regulation, and shall otherwise allow the use of compensatory leave if it shall not unduly disrupt the operations of the agency.

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

- 1. Exceed the number of normally prescribed hours of duty; and
- 2. Do not exceed the maximum amount of 200 compensatory hours.

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

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

(d) Any school-based employee who has accumulated compensatory leave shall be permitted to take time off when school is not in session [during the following times]:

- 1. Spring break; or
- 2. Christmas break, except on the four (4) official holidays normally given to state employees].

(e) All certified and equivalent employees shall be permitted to use accumulated compensatory time when practicable and

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requested in advance and if approved by the respective supervisor.

Section 3. Annual and Personal Leave. (1) Accrual of annual leave.

(a) Each full-time employee, except ~~school-based~~ teachers and principals, shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 day per month
60-119 months	1 1/4 days per month
120-179 months	1 1/2 days per month
180-239 months	1 3/4 days per month
240 months & over	2 days per month

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Annual leave shall be accumulated only in the months in which the employee is hired to work. ~~[A teacher employed to teach ten and one-half (10 1/2) months shall accrue leave during the actual school term, unless he is approved to work and actually works extended employment.]~~

(d) Beginning in the 2018-2019 school year, teachers and principals shall be entitled to twenty-two and one-half hours (22.5) of personal leave. Personal leave shall accumulate at the beginning of each school year[at the beginning of each school year]. Any unused personal leave in accordance with this section shall be converted to sick leave at the end of each school year.

~~(e)[(d)]~~ Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

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

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

~~(h)[(g)]~~ A former employee who is appointed, reinstated, or re-employed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for prior annual months of service.

~~(i)[(h)]~~ An employee dismissed for cause who has been reinstated to state service shall receive credit for annual months of service prior to dismissal, except if the dismissal resulted from a violation of KRS 156.838[454B.090].

~~(j)[(i)]~~ Part-time, temporary, or seasonal employees shall not be entitled to annual leave.

(2) Use and retention of annual and personal leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours. Teachers and principals shall use personal leave in **three and three-quarter hour (3.75) [half-day (3.75 hour)]** increments.

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

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under Section 3(2)(f) of this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave or personal leave.

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

(f) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays

180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

(g) Leave in excess of the maximum amounts specified in paragraph (f) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement, whichever comes first.

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

(3) Annual and personal leave on separation.

(a) An employee who is separated by proper resignation or retirement shall be paid in a lump sum for accumulated annual leave not to exceed the amounts established by subsection (2)(f) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance. A teacher or principal who is separated by proper resignation or retirement shall be paid in a lump sum for accumulated personal leave not to exceed twenty-two and one-half hours (22.5).

(b) An employee who is laid off shall be paid in a lump sum for all accumulated annual, or personal, or annual and [and/or] personal leave. Payment for personal leave shall not exceed twenty-two and one-half hours (22.5).

(c) An employee in the unclassified service who resigns or terminates one (1) workday and returns to certified and equivalent service the next workday shall retain accumulated annual leave in the receiving agency.

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

(e) Upon the death of an employee, the employee's estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual, or personal, or annual and [and/or] personal leave. Payment for personal leave shall not exceed twenty-two and one-half hours (22.5).

(f) An employee may request in writing that accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by subsection (2)(f) of this section be waived, if:

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

Section 4. Sick Leave. (1) Accrual of sick leave.

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

(b) An employee, except teachers and principals, shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

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

(d) Beginning in the 2018-2019 school year, teachers and principals shall be credited with seventy-five (75) hours of sick leave at the beginning of each school year.

~~(e)[(d)]~~ A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. A teacher or principal who completes ten (10) years of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the following school year.

~~(f)[(e)]~~ A full-time employee who completes 240 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. A teacher or principal who completes twenty (20) years of total service with the state shall be credited with ten (10) additional days of sick leave

upon the first day of the following school year.

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

(h)[(g)] The total service shall be verified before the leave is credited to the employee's record.

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

(j)[(i)] A former employee who is appointed, reinstated, or re-employed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for the unused sick leave balance credited upon the separation and shall receive credit for prior sick months of service.

(k)[(j)] An employee dismissed for cause who has been rehired to state service shall receive credit for sick months of service prior to the dismissal, unless[except if] the dismissal resulted from a violation of KRS 156.838[154B.090].

(l)[(k)] Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) The appointing authority or his designee shall grant or may require the use of accrued sick leave with pay if an employee:

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

2. Is disabled by illness or injury. The appointing authority or his designee may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;

3. Is required to care for or transport a member of the immediate family in need of medical attention for a reasonable period of time. The appointing authority or his designee may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;

4. Would jeopardize the health of himself or others at the work station because of a contagious disease or demonstration of behavior that might endanger the employee or others;

5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them, or, if granted by the appointing authority, another relative of close association. Leave under this subparagraph shall be limited to three (3) days; or

6. Requires leave for the birth, placement, or adoption of a child.

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

(c) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

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

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

(3) Sick leave without pay.

(a) The appointing authority or his designee shall grant sick leave without pay for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

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

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority or his designee shall notify the employee in writing of the leave without pay status.

(c) The appointing authority or his designee may require a periodic doctor's statement during the year attesting to the employee's continued inability to perform essential functions of his duties with or without reasonable accommodation.

(d) The appointing authority or his designee may grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required

to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority or his designee shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

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

1. Inform the employer; and

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

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay;

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

3. Is unable to return to his former position;

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

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

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

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

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

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

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

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

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

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

Section 5. Family and Medical Leave. (1) The appointing authority or his designee shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601, et seq., and the federal regulations implementing the Act, 29 C.F.R. Part 825.

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

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

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

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



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

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

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 6. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

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

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

(2) Court leave shall include necessary travel time.

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

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

Section 7. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

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

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

(4) The appointing authority or his designee may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) The appointing authority or his designee shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 8. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

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

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

(4) A central office ~~An~~ employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the time the polls are open, up to a maximum of four (4) hours. School-based employees shall receive time off to vote.

Section 9. Special Leave of Absence. (1) If approved by the associate commissioner for career and technical education ~~secretary~~, the appointing authority or their ~~his~~ designee may grant a leave of absence for continuing education or training.

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

(b) If granted, leave shall be with pay if the employee enters into a service commitment contract, or without pay in the

absence of a service commitment contract ~~leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.~~

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

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

(3) The appointing authority or his designee may place an employee on special leave with pay for investigative purposes for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct.

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

(b) If the investigation reveals no misconduct on behalf of the employee, all records relating to the investigation shall be purged from the Office of Career and Technical Education.

(c) The appointing authority or his designee shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned in the interim.

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

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

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

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

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

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

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

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

(a) Except as provided in this paragraph, time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

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

(5) If adverse ~~catastrophic, life-threatening~~ weather conditions occur, ~~as created by a tornado, flood, ice storm or blizzard,~~ and it becomes necessary for authorities to order

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evacuation or shut down the place of employment, the provisions established in this subsection shall apply.

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

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 2 of this administrative regulation and the Fair Labor Standards Act as amended.

(6) Adverse weather leave shall not be used by school-based employees when school is in session. Adverse weather leave may be used by school-based employees under extraordinary circumstances, as determined by the associate commissioner for career and technical education.

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

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor require the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

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

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

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

(5) School-based employees shall not receive blood donation leave.

Section 13. [Personal and] Emergency Leave. (1) [Beginning in the 2018-2019 school year, teachers and principals shall be entitled to twenty-two and one-half (22.5) hours of personal leave.

(a) Personal leave shall accumulate at the beginning of each school year. Any unused personal leave in accordance with this section shall be converted to sick leave at the end of each school year.

(b) A teacher or principal who makes a timely request for personal leave shall be granted personal leave by the appointing authority, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(2) Beginning in the 2018-2019 school year, teachers and principals shall be entitled to twenty-two and one-half (22.5) hours of emergency leave.

(a) Emergency leave shall accumulate at the beginning of each school year. Any unused emergency leave in accordance with this section shall expire at the end of each school year. Remaining emergency leave balances shall not be paid out upon separation of an employee.

(b) Emergency leave may be used due to death, illness, injury, or [and] certain other urgent matters. Teachers and principals shall give as much advance notice as possible to their supervisor prior to using emergency leave.

(c) Emergency leave shall be used in three and three-quarter hour (3.75)[half-day (3.75-hour)] increments when possible.

Section 14[43]. Eligibility for State-paid Health and Life Insurance Benefits. (1) A twelve (12) month employee who is eligible for state-paid life insurance benefits under the provisions of KRS Chapter 156[154B] shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

(2) A twelve (12) month employee who is eligible for state-paid health insurance benefits under the provisions of KRS Chapter 156[154B] shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the

previous pay period.

(3) A teacher or principal[ten and one-half (10 1/2) month employee] who is eligible for state-paid life insurance benefits under the provisions of KRS Chapter 156[154B] shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month, except between the last day of school of the previous year and first day of school of the following year[dates of June 16 and July 31].

(4) A teacher or principal[ten and one-half (10 1/2) month employee] who is eligible for state-paid health benefits under the provisions of KRS Chapter 156[154B] shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous pay period, except between the last day of school of the previous year and first day of school of the following year[dates of June 16 and July 31].

(5) A teacher or principal[ten and one-half (10 1/2) month employee] who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 156[154B] shall be entitled to state-paid health and life insurance benefits between the last day of school of the previous year and first day of school of the following year[June 16 and July 31].

(6) If an employee is unable to work and uses paid leave to qualify for [the] state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

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).

STEPHEN L. PRUITT, Ph.D., Commissioner of Education  
MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: August 11, 2017

FILED WITH LRC: August 11, 2017 at noon

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email [kevin.brown@education.ky.gov](mailto:kevin.brown@education.ky.gov).

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, October 10, 2017)

780 KAR 3:080. Extent and duration of school term, use of school days and extended employment.

RELATES TO: KRS 156.808[154B-035][~~(3)(i)~~]  
STATUTORY AUTHORITY: KRS 156.808(1), (2), and (3)(i)  
[154B-035]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808[154B-035](3)(i) requires the Kentucky Board of Education[Executive Director of the Office of Career and Technical Education] to promulgate [comprehensive] administrative regulations relating to the extent and duration of the Kentucky Tech System school term, use of school days, and extended employment. This administrative regulation establishes the school term and employment provisions for employees.

Section 1. (1) Except as provided in Section 2 of this administrative regulation, the regular work year for any teacher[secondary instructor] in a state-operated area technology center shall be 190 work days between July 1 and June 30 annually, to be scheduled by the center principal[August 1 through June 15].

(2) During this work year, secondary students shall begin classes based on the participating school district schedules.

(3) An area technology center shall not be closed if secondary school students need to be served for the participating school districts.

(4) Any employee required to work on an official holiday in

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order to serve students shall be compensated~~[granted compensatory time]~~.

(5) The duties of an area technology center principal shall consist of 228 work days between July 1 and June 30 annually, to be scheduled by the associate commissioner for career and technical education or their designee.

(6)[(5)] If the[a] school district where the center is located closes due to inclement weather, staff in the area technology center shall not report to work and the work day will be re-scheduled to meet student needs[as usual or take official leave unless a state of emergency is declared by the Governor or the appointing authority]. Non-traditional instruction days may be allowed at the discretion of the associate commissioner for career and technical education.

(7) The school calendar shall be adopted on or before May 30 of each year by the associate commissioner of career and technical education or their designee.

Section 2. (1) A teacher may be employed beyond the 190 work days if requested and approved by the associate commissioner for career and technical education or their designee~~[Except as provided in subsection (2) of this section, a secondary instructor in an area technology center may be employed up to six (6) weeks beyond the ten and one-half (10 1/2) month calendar year (August 1 through June 15) for specified activities which cannot be carried out routinely during the year and which include at least three (3) weeks of planned direct student contact].~~

~~(2)[The maximum extended time for an instructor without three (3) weeks of planned direct student contact shall be three (3) weeks.~~

~~(3) Extended instructional summer options shall be planned jointly by the instructor and either the school principal or executive director.~~

~~(4) Extended employment activities shall conform to the requirements established in this subsection.~~

~~(a) Up to six (6) weeks may be approved for supervision of students in specific classroom instruction. Before approval is granted for extended time, an instructional plan for the summer teaching activities shall be approved by the central office. This plan shall include the purpose, classes to be taught, time schedule, and inclusive dates.~~

~~(b) Up to one (1) week may be approved for required state technical update and school in-service.~~

~~(c) Up to two (2) weeks may be approved for staff or industry exchange and other educational approved programs.~~

~~(d) The associate commissioner for career and technical education or their designee[executive director] may request that the teacher[secondary instructor] perform other essential services for which extended employment shall be provided. The special request shall be handled on an individual basis.~~

~~(3)[(5)](a) To request extended employment, a teacher[secondary instructor] in an area technology center shall submit a **written request**[completed Extended Employment Application for Secondary Teachers] to the teacher's[instructor's] principal.~~

~~(b) If the principal approves the request, the principal shall sign the **request[application]** and submit it to the area supervisor.~~

~~(c) If the area supervisor approves the request, the area supervisor shall sign the **request[application]** and submit it to the associate commissioner for career and technical education or their designee[executive director] by April 15.~~

~~(d) The associate commissioner for career and technical education or their designee[executive director] shall send written notification regarding the decision to the teacher[instructor] by May 30. The notification shall indicate:~~

~~1. If the **request[application]** was approved, the number of days for which approval was granted; **or[and]**~~

~~2. If the **request[application]** was not approved, the reasons for denial.~~

Section 3. (1) Any teacher[instructor] employed 190 working days~~[ten and one-half (10 1/2) months]~~ may request that their[his]

salary be paid in twenty-four (24) paychecks.

(2) The last two (2) paychecks shall be adjusted if necessary to reflect any salary variance due to changes in work schedules.

Section 4. (1) All area technology centers shall be officially closed to students on the official holidays designated for Christmas and New Year's.

~~(2)[An employee shall either work during this period or be on some form of approved leave. If the employee desires to work during this period, he may do so only upon the submission of a work plan by the employee and the approval of the plan by the employee's supervisor prior to the initiation of the work.~~

~~(3) The principal may require an employee to work for safety or security reasons. [Section 5. Incorporated by Reference. (1) "Extended Employment for 10 1/2 Month Employee", March 2009, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education and Workforce Development Cabinet, 500 Mero Street, 20th 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).

STEPHEN L. PRUITT, Ph.D.

MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: August 11, 2017

FILED WITH LRC: August 11, 2017 at noon

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email [kevin.brown@education.ky.gov](mailto:kevin.brown@education.ky.gov).

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office of Employment and Training (As Amended at ARRS, October 10, 2017)

#### 787 KAR 1:070. Reasonable time for protesting claim.

RELATES TO: KRS 341.370(3), 341.530(3)

STATUTORY AUTHORITY: KRS 151B.020, 341.115, 341.370(3), 341.530(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.370(3) and 341.530(3) require the secretary to promulgate administrative regulations establishing what constitutes reasonable time within which an employer shall protest a claim by a former worker. This administrative regulation establishes the requirements for determining reasonable time.

Section 1. (1) Except as provided in Section 2 of this administrative regulation, the reasonable time referred to in KRS 341.370(3) or 341.530(3) shall not extend beyond the following:

(a) If the employer submits by paper, documentation of the protest shall be received within ten (10) days after the date of the first notice to the employer from the department that a claim has been filed; or

(b) If the employer submits electronically, documentation of the protest shall be received within twelve (12) days of the first notice to the employer from the department that a claim has been filed. [ten (10)] [fifteen (15)] [days after the date of the first notice to the employer from the department that a claim has been filed.]

(2) In computing the protest deadline in Section 1(1)[this ten (10)] [fifteen (15)] [day period]:

(a) The day following the date of mailing of the notice shall be considered the first day; and

(b) The date the employer's return notice is received by the department shall be determined as provided in 787 KAR 1:230.

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Section 2. (1) If the employer is not the worker's most recent employer and has not received Form UI-412A as provided in 787 KAR 1:060, the reasonable time referred to in KRS 341.530(3) shall not extend beyond the following:

(a) If the employer submits by paper, documentation of the protest shall be received within ten (10) days after the date of the first notice to the employer from the department that a claim has been filed; or

(b) If the employer submits electronically, documentation of the protest shall be received within twelve (12) days of the first notice to the employer from the department that a claim has been filed. [ten (10)] [fifteen (15)] [days after the date of first notice to the employer from the department that a claim has been filed.]

(2) In computing the protest deadline in subsection (1) of this section [ten (10)] [fifteen (15)] [day period]:

(a) The day following the date of mailing of the notice shall be considered the first day; and

(b) The date the employer's return notice is received by the department shall be determined as provided in [as] 787 KAR 1:230.

JASON DUNN, Executive Director

APPROVED BY AGENCY: September 15, 2016

FILED WITH LRC: September 15, 2016 at noon

CONTACT PERSON: Katie Houghlin, Assistant Director, Unemployment Benefits, 275 East Main, 2C, Frankfort, Kentucky 40602, phone (502) 564-2900 email KatieM.Houghlin@ky.gov, fax (502) 564-5502.

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Wages and Hours**  
**(As Amended at ARRS, October 10, 2017)**

**803 KAR 1:100. Child labor.**

RELATES TO: KRS ~~339.205-339.990~~339.210-339.450, 29 C.F.R. ~~Part~~ 570, 29 U.S.C. 201-219

STATUTORY AUTHORITY: KRS 339.230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 339.230(3) requires the ~~Commissioner~~[Executive Director] of the ~~Department~~ [Office] of Workplace Standards to promulgate administrative regulations to protect the life, health, safety, or welfare of minors. The commissioner~~[He]~~ may consider sex, age, premises of employment, substances to be worked with, machinery to be operated, number of hours, hours of the day, nature of the employment, and other pertinent factors. KRS 339.230(3) further provides that the commissioner in promulgating these administrative regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he or she make them less restrictive~~[29 U.S.C. 201 to 219 of the Fair Labor Standards Act and 29 C.F.R. 570 establish that the executive director shall not promulgate administrative regulations less restrictive than those promulgated by the U.S. Secretary of Labor].~~ This administrative regulation establishes standards for the employment of minors. This administrative regulation and KRS 339.205 to 339.990 shall guide the ~~Department~~[Office] of Workplace Standards in carrying out its responsibilities under the law and assist employers in understanding their obligations under the law.

Section 1. Definitions. (1) "Minor" means a person between the ages of fourteen (14) and eighteen (18) who is either:

(a) Enrolled in public, private, or home school; or

(b) Not enrolled in school and has not achieved the required credits for graduation from high school as established by a local school district authority, pursuant to KRS 160.290.

(2) "School in session" means that time as established by local school district authorities, pursuant to KRS 160.290.

(3) "School not in session" means that period of time not included in subsection ~~(2)~~(4) of this section.

Section 2. Employment of Minors Between Fourteen (14) and Sixteen (16) Years of Age. (1) Minors between fourteen (14) and sixteen (16) years of age shall not be employed in any of the following:

(a) Manufacturing, mining, or processing occupations, including occupations requiring the performances of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;

(b) Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

(c) The operation of motor vehicles or service as helpers on such vehicles;

(d) Public messenger service;

(e) Occupations in connection with:

1. Transportation of persons or property by rail, highway, air, water, pipeline, or other means;

2. Warehousing and storage;

3. Communications and public utilities; and

4. Construction (including demolition and repair), except office work, or sales work in connection with subparagraphs 1, 2, 3, and 4 of this paragraph, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

(f) Any occupation which the U.S. Secretary of Labor finds and declares to be hazardous for the employment of minors and established in 29 C.F.R. ~~[570, Subpart E, Section]~~ 570.50 through 570.68; or

(g) Any occupation prohibited under KRS 339.230(2)(d).

(2) Except as provided in subsection (3) of this section, employment in any of the occupations to which this section is applicable shall be confined to the following periods:

(a) Outside school hours;

(b) Not more than forty (40) hours in any one (1) work week when school is not in session;

(c) Not more than eighteen (18) hours in any one (1) work week when school is in session;

(d) Not more than eight (8) hours in any one (1) day when school is not in session;

(e) Not more than three (3) hours in any one (1) school day, nor more than eight (8) hours in any one (1) nonschool day when school is in session; and

(f) Between 7 a.m. and 7 p.m. in any one (1) day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

(3) Notwithstanding subsection (2)(a) of this section, a minor who is enrolled in a school supervised and administered work experience or career exploration program pursuant to 29 C.F.R. ~~570.35(a)~~570, Subpart C, Section 570.35a, if the employment will not interfere with the minor's schooling, health, or well-being, may work during school hours.

(4) Minors between fourteen (14) and sixteen (16) years of age may be employed by retail, food service, and gasoline service establishments in the following occupations:

(a) Office and clerical work, including the operation of office machines;

(b) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping;

(c) Price marketing and tagging by hand or by machine, assembling orders, packing and shelving;

(d) Bagging and carrying out customer's orders;

(e) Errand and delivery work by foot, bicycle, and public transportation;

(f) Clean up work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds. Cleanup work shall not include the use of power-driven mowers, or cutters;

(g) Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as but not limited to: dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders;

(h) Work in connection with cars and trucks if confined to the following: dispensing gasoline and oil; courtesy service; car

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cleaning, washing, and polishing; and other occupations permitted by this section. This shall not include work involving the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring; and

(i) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing, and stocking goods if performed in areas physically separate from freezers and meat coolers.

(5) Subsection (4) of this section shall not be construed to permit the employment of minors between fourteen (14) and sixteen (16) years of age in any of the following in retail, food service, and gasoline service establishments:

(a) All occupations listed in subsection (1) of this section;

(b) Work performed in or about boiler or engine rooms;

(c) Work in connection with maintenance or repair of the establishment, machines, or equipment;

(d) Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes;

(e) Cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking;

(f) Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers, and cutters, and bakery-type mixers;

(g) Work in freezers and meat coolers and all work in the preparation of meats for sale except as described in subsection (4)(i) of this section;

(h) Loading and unloading goods to and from trucks, railroad cars, or conveyors; or

(i) All occupations in warehouses except office and clerical work.

Section 3. Employment of Minors Between Sixteen (16) and Eighteen (18) Years of Age. (1) Minors between sixteen (16) and eighteen (18) years of age may be employed at any occupation except as restricted for the following occupations:

(a) Occupations particularly hazardous as declared by the U. S. Secretary of Labor and established in 29 C.F.R. ~~[570, Subpart E, Section]~~ 570.50 through 570.68.

(b) Any occupation prohibited under KRS 339.230(2)(d).

(2) Employment in any occupation, not prohibited by subsection (1) of this section, shall be confined to the following periods:

(a) Not more than thirty (30) hours in any one (1) work week when school is in session, except that a minor may work up to thirty-two and one-half (32.5) hours in any one (1) work week if a parent or legal guardian gives permission in writing in accordance with paragraph (c) of this subsection and up to forty (40) hours in any one (1) work week if a parent or legal guardian gives permission in writing, and the principal or head of the school the minor attends certifies in writing that the minor has maintained at least a 2.0 grade point average in the most recent grading period. School certification shall be valid for one (1) year unless revoked sooner by the school authority. The parental or guardian permission and school certification shall remain at the employer's place of business;

(b) Not more than six (6) hours in any one (1) school day, nor more than eight (8) hours in any one (1) non-school day when school is in session, except that a minor may work up to six and one-half (6.5) hours in any one (1) school day if a parent or guardian gives permission in writing in accordance with paragraph (c) of this subsection;

(c) Between 6 a.m. and 10:30 p.m. on days preceding a school day, except that a minor may be employed until 11:00 p.m. on days preceding a school day if a parent or legal guardian gives permission in writing. The parental or guardian permission shall remain at the employer's place of business; and

(d) ~~Between~~ ~~between~~ 6 a.m. and 1 a.m. on days preceding a non-school day when school is in session. ~~[Section 4. Effective Date. This administrative regulation shall become effective on June 15, 2002.]~~

ERVIN DIMENY, Commissioner

APPROVED BY AGENCY: July 18, 2017

FILED WITH LRC: July 18, 2017 at 2 p.m.

CONTACT PERSONS: Brittany Thomas, Executive Administrative Secretary, Department of Workplace Standards, 1047 U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-0960, fax (502) 564-2248, email BrittanyC.Thomas@ky.gov.; and Ervin Dimeny, Commissioner, Department of Workplace Standards, 1047 U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-0977, fax (502) 564-2248, email Ervin.Dimeny@ky.gov.

**PUBLIC PROTECTION CABINET  
Department of Alcoholic Beverage Control  
(As Amended at ARRS, October 10, 2017)**

**804 KAR 5:070. Minors.**

RELATES TO: KRS~~[241.030(37);~~ 244.080, 244.085,~~244.087;~~ 244.090

STATUTORY AUTHORITY: KRS 241.060(1), 244.085(5)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the ~~board~~[Alcoholic Beverage Control Board] to promulgate administrative regulations regarding matters over which the board has jurisdiction~~[governing procedures relative to the supervision and control of the use and sale of alcoholic beverages].~~ Subject to certain exceptions in KRS 244.085, a licensee, or the licensee's agents, servants, or employees, ~~cannot~~~~[may not]~~ permit persons under twenty-one (21) years of age to remain on any premises where alcoholic beverages are sold by the drink or consumed on the premises. In addition to the statutorily exempted business types, KRS 244.085(5)(a) authorizes the board to exempt additional business types from the prohibition of KRS 244.085(5) if their operations permit them to adequately monitor and prevent alcohol sales to minors. This administrative regulation specifically identifies a ~~[non-exhaustive]~~ list of additional business types exempted from KRS 244.085(5), and establishes requirements governing the presence of minors on licensed premises.

Section 1. Definitions. (1) "Barber shop" means an establishment licensed under KRS Chapter 317, at which the practice of barbering is conducted.

(2) "Bed and Breakfast" is defined by KRS 241.010(5).

(3) "Bowling alley" means a building containing several lanes for the sport of tenpin bowling.

(4) "Commercial airplane" means an airplane used by a commercial airlines system or charter flight system for regularly scheduled or charter flights~~airport" is defined by KRS 241.010(15)].~~

(5) "Commercial airport" is defined by KRS 241.010(15).~~.]~~

(6) "Department store" means a retail establishment offering consumer goods for sale and including but not limited to clothing, furniture, jewelry, cosmetics, and other similar products.

(7) "Designated drinking area" means an area containing a bar, counter, or similar structure, where employees prepare and serve alcoholic beverages to customers, that is separated from the remainder of the premises by a barrier and that has no more than two (2) entrances and exits accessible from the remainder of premises. The designated drinking area may contain employee access by keyed entry and emergency exits equipped with crash bars.

(8) "Museum" means a building or place where works of art, scientific specimens, or other objects of cultural value are stored and exhibited.

(9) "Not-for-profit event" means an activity of limited duration organized and conducted by a charity or not-for-profit organization for fundraising or other purposes.

(10) "Organized civic or community-sponsored event" is defined by 804 KAR 4:250, Section 1.

(11) "Paint and Sip business" means a business that provides paid group painting lessons accompanied by alcoholic beverages.

(12) "Qualified historic site" is defined by KRS 241.010(47).

(13) "Riverboat" is defined by KRS 241.010(54).

(14) "Salon and Spa" means an establishment licensed under KRS Chapter 317A at which cosmetology, nail technology, or esthetic practices are conducted.

(15) "Train" means a railroad locomotive and cars used by a railroad system. Premises that qualify for the restaurant exemption, pursuant to KRS 244.085(6), shall only be exempted during those times of the day that meals are served to customers.]

Section 2. Business Types that Can Adequately Monitor and Prevent Alcohol Sales to Minors. Pursuant to KRS 244.085(5)(a) and in addition to the business types identified in KRS 244.085(5)(a) and Section 3 of this administrative regulation, the board determines that the operations of the following specific business types allow them to adequately monitor and prevent alcohol sales to minors and that they may permit minors to remain on their licensed premises if operating as a:

- (1) Barber shop;
- (2) Bed and breakfast;
- (3) Bowling alley;
- (4) Charity conducting a not-for-profit event;
- (5) Commercial airplane;
- (6) Commercial airport;
- (7) Department store;
- (8) Museum;
- (9) Paint and sip business;
- (10) Qualified historic site;
- (11) Riverboat;
- (12) Salon and spa;
- (13) Train; ~~for~~
- (14) Vendor operating at an organized civic or community-sponsored event; or

~~(15) Business whose alcoholic beverage sales do not exceed fifty (50) percent of its gross sales. Unless an establishment is exempted under KRS 244.085(6), every retail licensee that sells alcoholic beverages by the drink for consumption on the premises shall display at all times, in a prominent place, a printed card at least 8 in. x 11 in. in size which shall read, in thirty (30) point or larger type, substantially as follows:  
PERSONS UNDER 21 MAY NOT ENTER OR REMAIN ON THIS PREMISES.]~~

Section 3. Premises with Designated Drinking Areas. In addition to the businesses identified in KRS 244.085(5)(a) and Section 2 of this administrative regulation, a licensee may permit minors to remain on licensed premises where alcoholic beverages are sold by the drink or consumed if the licensee only conducts drink sales and permits consumption in a designated drinking area from which minors are excluded.

Section 4. Permissive Exclusion of Minors. Notwithstanding the provisions of KRS 244.085(5)(a) and Sections 2 and 3 of this administrative regulation, a licensee may exclude minors from parts or all of its premises.

Section 5. Minors on Premises Sign. Every licensee selling alcoholic beverages by the drink for consumption on premises where minors are prohibited, or in a designated drinking area where minors are prohibited, shall display at all times, in a prominent place near the entrance to the premises or designated drinking area where minors are prohibited, a printed card at least eight (8) inches x eleven (11) inches in size which shall read, in 100 point or larger type, substantially as follows: NO PERSONS UNDER 21 ALLOWED.

CHRISTINE TROUT, Commissioner  
 DAVID A. DICKERSON, Secretary  
 APPROVED BY AGENCY: August 15, 2017  
 FILED WITH LRC: August 15, 2017 at 11 a.m.  
 CONTACT PERSON: Heather Mercadante, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email Heather.Mercadante@ky.gov.

**PUBLIC PROTECTION CABINET  
 Department of Alcoholic Beverage Control  
 (As Amended at ARRS, October 10, 2017)**

**804 KAR 6:020. Advisory opinions.**

RELATES TO: KRS ~~241.020~~, 241.060[~~, 241.020~~]  
 STATUTORY AUTHORITY: KRS ~~241.020(1), 241.060(1)~~[~~241.020, 241.060~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations governing procedures relative to the matters over which the board has jurisdiction. KRS 241.020(1) authorizes the department to issue advisory opinions and declaratory rulings related to KRS Chapters 241 to 244 and the administrative regulations promulgated under those chapters. This administrative regulation establishes the procedures and requirements for requesting advisory opinions and the process utilized by the department in responding to those requests.

Section 1. Definitions. (1) "Advisory Opinion" means a ruling by the Department that addresses questions or issues properly submitted for consideration ***as required by Sections 2, 3, and 7 of this administrative regulation.***

- (2) "Department" is the Department of Alcoholic Beverage Control as defined by KRS 241.010(21).
- (3) "Person" is defined by KRS 446.010(33).

Section 2. Request for Advisory Opinion. (1) Any person may request, in writing, an advisory opinion concerning the application and interpretation of alcoholic beverage control statutes and administrative regulations with regard to a particular act or transaction that the requestor is taking or plans to take. Requests presenting a general question of interpretation, posing a hypothetical situation, involving the activities of third parties, or that implicate the subject of an investigation, pending case, or disciplinary action, shall not be considered.

- (2) The department may issue an advisory opinion on its own initiative.

Section 3. Form of Request. (1) The request shall be submitted on the Advisory Opinion Request Form and contain the following:

- (a) A clear and concise statement of all facts relevant to the request;
- (b) Citation to all applicable and relevant statutes, administrative regulations, decisions, orders, other written statements of law or interpretation, or any other persuasive or controlling authority that relates to the request;
- (c) A clear and concise statement of each and every question to be addressed;
- (d) The requestor's proposed response to each question presented, including a summary of the rationale for the proposed response;
- (e) Any documentation, research, or other evidence related to the request; and
- (f) A statement indicating whether, to the requestor's knowledge or belief, the requested questions or issues is pending before, under investigation by, or recently determined by any court of law or governmental entity.

(2) The request shall be signed by one (1) or more persons, with each signer's mailing address, telephone number, and email address clearly indicated. If a person signs on behalf of a corporation, limited liability company, association, or any other legal entity, the name of the entity, the address, telephone number, and email address of the entity or point of contact shall be included. The signer shall date the request.

(3) The request shall be submitted by mail or by email to the Commissioner of the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, email [abc.advisory@ky.gov](mailto:abc.advisory@ky.gov).

(4) If the request is deficient ***under Section 2 or 3 off as set forth in]*** this administrative regulation, the requesting person shall be notified of the deficiency within ten (10) business days of

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receipt.

(5) If the request meets the criteria of **Sections 2 and 3** of this administrative regulation, the department shall assign the request an advisory opinion request (AOR) number and publish the request on the department's Web site.

Section 4. Consideration. (1) The department may schedule an informal meeting between the requestor, any interested persons, and department representatives to present information and discuss questions raised. A final decision shall not be made at an informal meeting.

(2) In rendering an advisory opinion, the department shall consider:

- (a) All material submitted with the request; and
- (b) Comments received **in accordance with Section 6 of this administrative regulation**~~[prior to issuance of the advisory opinion]~~.

(3) In rendering an advisory opinion, the department may:

- (a) Consult experts or other individuals with knowledge of the substance of the request;
- (b) Require verification of information; and
- (c) Request additional documentation from the requestor.

Section 5. Issuance or Refusal to Issue an Opinion. The department shall issue an advisory opinion within ninety (90) days after receipt of the request, unless one (1) of the following applies:

- (1) Lack of jurisdiction over any of the questions or issues presented by the request;
- (2) Any of the questions or issues presented are pending before a board, governmental entity, or court of law that may definitively decide the questions or issues;
- (3) Any of the questions presented by the request would be more appropriately resolved in a different proceeding or forum;
- (4) Any of the facts or questions presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate;
- (5) Any of the questions or issues raised in the request become moot;
- (6) The request seeks a determination of the constitutionality of a statute, **administrative** regulation, or practice;
- (7) Issuance of an opinion will not be in the public interest; or
- (8) The department extends the time period to issue advisory opinion.

Section 6. Written Comments on Request. (1) Any interested person or party may submit written comments concerning a request for an advisory opinion by using the Advisory Opinion Request Form and identifying the AOR number associated with the request.

(2) Written comments shall be submitted by mail or email in the manner outlined in Section 3 of this administrative regulation no later than fourteen (14) business days following the date the request is made public by the department.

(3) The department may extend the written comment period.

Section 7. Reconsideration. (1) The department may revise any advisory opinion if circumstances warrant a revision. In doing so, the department shall issue a revised opinion in **accordance with Sections 2 through 6 of the manner outlined in** this administrative regulation, including an explanation of the rationale for the change or revision of the original opinion.

(2) Any person may request the department to reconsider or revise a **published** advisory opinion using the Advisory Opinion Request Form that identifies the AOR number associated with the **published** advisory opinion.

(3) The request for reconsideration shall be submitted by mail or email in the manner outlined in Section 3 of this administrative regulation no later than ten (10) business days following the publication of the opinion and contain the following:

- (a) A clear and concise statement of the grounds for the reconsideration request;
- (b) The proposed conclusion with a summary of the rationale supporting the proposed conclusion;
- (c) Any statute, administrative regulation, document, order, or

other statement of law or policy that supports the requested reconsideration with an explanation of the relevance of the material offered; and

(d) A statement of adverse impact, if any, resulting from the published advisory opinion.

Section 8. Publication of Advisory Opinions. (1) All advisory opinions shall be public. The department shall publish and maintain all advisory opinions. Publication shall be made by making a hard copy available for inspection and by placing the entire opinion on the department's **Web site**~~[website]~~.

(2) An index of all final published advisory opinions shall be maintained by the Department. The index shall include the subject of each opinion, its publication date, and any changes effectuated by the opinion.

Section 9. Incorporation by Reference. (1) "Advisory Opinion Request Form", July 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, <http://www.abc.ky.gov/>.

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: August 15, 2017

FILED WITH LRC: August 15, 2017 at 11 a.m.

CONTACT PERSON: Heather Mercadante, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email [Heather.Mercadante@ky.gov](mailto:Heather.Mercadante@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**(As Amended at ARRS, October 10, 2017)**

**806 KAR 3:210. Privacy of consumer financial and health information.**

RELATES TO: ~~KRS 304.2-105~~[~~KRS 304.12-470~~], 15 U.S.C. 6801-~~6809~~~~6810~~, the Gramm-Leach-Bliley Act  
STATUTORY AUTHORITY: KRS ~~304.2-105~~, 304.2-110, ~~304.17A-609~~, ~~304.17A.846~~, 15 U.S.C. 6801(b), 6805, the Gramm-Leach-Bliley Act

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the ~~commissioner~~[~~Executive Director~~] of the Department of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. The Gramm-Leach-Bliley Act, 15 U.S.C. 6801(b) and 6805, ~~requires~~[~~require~~] state insurance commissioners to establish standards for insurers, agencies, and agents to safeguard the security and confidentiality of consumer records and information. 15 U.S.C. 6801 to ~~6809~~~~6810~~ applies to financial institutions engaging in financial activities such as "insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for the purpose of the foregoing, in any State."~~[12 U.S.C. 1843(k)(4)(B)]~~ This administrative regulation extends the application to protect individuals "who obtain or are claimants or beneficiaries of products or services primarily for personal, family, or household purposes from licensees," in harmony with the federal regulations~~[of the federal functional regulators]~~. This stricter standard will hold all Kentucky licensees to the same standard, protect the privacy of Kentucky citizens, and promote uniformity of state insurance administrative regulations across state borders because [since] this administrative regulation is~~[was]~~ based on a national model adopted by the National Association of Insurance Commissioners~~[, and all states are imposing similar standards by statute or regulation.]~~ Although~~[The]~~ federal law does not prohibit

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financial institutions from discriminating against individuals who have used their right to opt out or refused to grant authorization to disclose nonpublic personal financial information, ~~this~~ [This] administrative regulation [is stricter in that it] protects Kentucky citizens [who choose to use their rights to opt out of disclosure] from discrimination. This administrative regulation establishes security requirements for an insurer's, agency's, or agent's use of consumers' financial and health information.

Section 1. Definitions. (1) "Affiliate" means a company that controls, is controlled by, or is under common control with another company.

(2) "Annually" means at least once in a period of twelve (12) consecutive months during which a customer relationship exists.

(3) "Clear and conspicuous" means that a notice ~~(that)~~ is reasonably understandable and designed to call attention to the nature and significance of information in the notice.

(4) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(5) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(6) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or similar organization.

(7) "Consumer" ~~(means):~~

**(a) 1. Means** an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information; or

**2. Means** that individual's legal representative.

**(b) Does [A "consumer" shall] include:**

1. An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment, or economic advisory services relating to an insurance product or service, regardless of whether the licensee establishes an ongoing advisory relationship;

2. An applicant for insurance prior to the inception of insurance coverage; **and**

3. An individual subject to disclosure by a licensee of nonpublic personal financial information to a nonaffiliated third party, other than as permitted under Sections 14, 15, and 16 of this administrative regulation, if:

a. The individual is a beneficiary of a life insurance policy underwritten by the licensee;

b. The individual is a claimant under an insurance policy issued by the licensee;

c. The individual is an insured or annuitant under an insurance policy or an annuity issued by the licensee; or

d. The individual is a mortgagor of a mortgage covered under a mortgage insurance policy.

**(c) Does not mean an individual is [An individual shall not be] a "consumer" solely on the basis that:**

1. An individual is a consumer of another financial institution and the licensee is acting as agent for, or provides processing or other services to, that financial institution;

2. An individual is a beneficiary of a trust for which the licensee is a trustee; **or**

3. An individual has designated the licensee as trustee for a trust. ~~]; or]~~

**(d) Does not mean an individual is [An individual shall not be] a "consumer" solely based on the status listed in subparagraph 2a through c of this paragraph, if:**

1. The licensee provides the initial, annual, and revised notices under Sections 5, 6, and 9 of this administrative regulation to the plan sponsor, group, or blanket insurance policyholder, group annuity contract holder, or workers' compensation plan participant; **and**

2. The licensee does not disclose to a nonaffiliated third party nonpublic personal financial information, other than as permitted under Sections 14, 15, and 16 of this administrative regulation,

about an individual who is:

a. A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer, or fiduciary;

b. Covered under a group or blanket life insurance policy or group annuity contract issued by the licensee; or

c. A beneficiary in a workers' compensation plan.

**(e) Does mean** the individuals described in paragraph **(d)2a through c** ~~[(b)3a through c]~~ of this subsection **are [shall be]** consumers of a licensee if the licensee fails to meet all the conditions of paragraph **(d)1 and 2** ~~[(b)1 and 2]~~ of this subsection.

**(8) "Consumer reporting agency"** is defined in 15 U.S.C. 1681a(f) of the federal Fair Credit Reporting Act.

**(9) "Continuing relationship":**

**(a)** Means a relationship between a consumer and a licensee if:

**1. [(a)]** The consumer is a current policyholder of an insurance product issued by or through the licensee; or

**2. [(b)]** The consumer obtains financial, investment, or economic advisory services relating to an insurance product or service from the licensee for a fee.

**(b) Does not mean that [(e)]** a consumer **has [shall not be deemed to have]** a continuing relationship with the licensee if:

1. The consumer applies for insurance but does not purchase the insurance;

2. The licensee sells the consumer airline travel insurance in an isolated transaction;

3. The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

4. The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a settlement option involving an ongoing relationship with the licensee;

5. The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

6. The customer's policy has lapsed, expired, or is otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or administrative regulation, communication at the direction of a state or federal authority, or promotional materials;

7. The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

8. The individual's last known address according to the licensee's records is **[deemed]** invalid. An address of record **is [shall be deemed]** invalid if mail sent to that address by the licensee is returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual are unsuccessful.

**(10) "Control" means:**

**(a)** Ownership, control, or power to vote twenty-five (25) percent or more of the outstanding shares of any class of voting security of the company, or acting through one (1) or more other persons;

**(b)** Control over the election of a majority of directors, trustees, or general partners, or individuals exercising similar functions of the company; or

**(c)** The power to exercise a controlling influence over the management or policies of the company.

**(11) "Customer"** means a consumer who has a customer relationship with a licensee.

**(12) "Customer relationship"** means a continuing relationship between a consumer and a licensee under which the licensee provides one (1) or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.

**(13) (a) "Designed to call attention"** means that the notice:

**1. [(a)]** Uses a plain-language heading;

**2. [(b)]** Uses a typeface and type size that are easy to read;

**3. [(c)]** Provides wide margins and ample line spacing;



4. [(d)] Uses boldface or italics for key words; and

5. [(e)] Is in a form that combines the licensee's notice with other information and uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(b) [(f)] If a licensee provides a notice on an Internet Web page, "designed to call attention" means that the notice uses text or visual cues to encourage scrolling down the page to view the entire notice, if necessary, and ensures that other elements on the Web site do not distract attention from the notice, and the licensee either:

1. Places the notice on a screen that consumers frequently access, **including[such as]** a page on which transactions are conducted; or

2. Places a link on a screen that consumers frequently access, **including[such as]** a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(14) "Financial institution":

(a) Means any institution engaging in activities that are financial in nature or incidental to financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 at 12 U.S.C. 1843(k).

(b) ~~Does(a) "Financial institution" shall~~ not mean[include]:

1. Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under 7 U.S.C. 1 to 27f of the Commodity Exchange Act;

2. The federal Agricultural Mortgage Corporation or any entity charged and operating under 12 U.S.C. 2001-2279cc of the Farm Credit Act of 1971; or

3. Institutions chartered by U.S. Congress specifically to engage in securitizations, secondary market sales, including sales of servicing rights, or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(15) "Financial product or service" means:

(a) Any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to a financial activity described in Section 4(k) of the Bank Holding Company Act of 1956 at 12 U.S.C. 1843(k); **and**

(b) [or]:

(a) "Financial service" shall include] A financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(16) "Former customer" means an individual with whom a licensee no longer has a continuing relationship.

(17) "Health care" means preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, services, procedures, tests, or counseling that:

(a) Relates to the physical, mental, or behavioral condition of an individual; **[or]**

(b) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; or

(c) Prescribing, dispensing, or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(18) "Health care provider" is defined **by[is]** KRS 304.17A-005(23).

(19) "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by, or derived from a health care provider or the consumer that relates to:

(a) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

(c) Payment for the provision of health care to an individual.

(20) "Insurance product or service" means:

(a) Any product or service that is offered by a licensee, pursuant to KRS Chapter 304: **and**

(b) [or]:

~~(a) "Insurance service" shall include] A licensee's evaluation, brokerage, or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.~~

(21) "Joint agreement" means a written contract pursuant to which a licensee and one (1) or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

(22) "Licensee":

(a) Means all insurers holding a certificate of authority, licensed producers, companies, or business entities licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Kentucky Insurance Code, KRS Chapter 304. ~~(a) A licensee shall not be subject to the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if the licensee is an employee, agent, or other representative of another licensee, "the principal", and:~~

~~1. The principal otherwise complies with, and provides the notices required by, the provisions of this administrative regulation; and~~

~~2. The licensee does not disclose any nonpublic personal financial information to any person other than the principal or its affiliates in a manner permitted by this administrative regulation.~~

~~(b) Subject to paragraph (a) of this subsection, "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus broker in Kentucky, but only in regard to the surplus lines placements placed pursuant to KRS 304.10.~~

~~(c) A surplus lines broker or surplus lines insurer shall be in compliance with the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if:~~

~~1. The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 14 of this administrative regulation, except as permitted by Section 15 or 16 of this administrative regulation; and~~

~~2. The broker or insurer delivers a notice to a consumer when a customer relationship is established on which the following is printed in sixteen (16) point type:~~

~~"PRIVACY NOTICE - NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW."~~

~~(b) Does[(d) A licensee shall] not mean[include] registered service contract makers as defined in 806 KAR 5:060.~~

(23) "Necessary to effect, administer, or enforce a transaction" means that the disclosure is:

(a) Required;

(b) [or]:

(a) [or] Is one (1) of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(c) [(b)] Is a usual, appropriate, or acceptable method:

1. To carry out the transaction, the product, or the service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the insurance product or service;

2. To administer or service benefits or claims relating to the transaction, product, or service business of which it is a part;

3. To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

4. To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

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5. To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance:

- a. Account administration;
- b. Reporting;
- c. Investigating or preventing fraud or material misrepresentation;
- d. Processing premium payments;
- e. Processing insurance claims;
- f. Administering insurance benefits, such as utilization review activities;
- g. Participating in research projects; or
- h. As otherwise required or specifically permitted by federal or state law; or

6. In connection with:

- a. The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check or account number, or by other payment means;
- b. The transfer of receivables, accounts, or interests; or
- c. The audit of debit, credit, or other payment information.

(24) "Nonaffiliated third party":

(a) Means any person who is not:

- 1. ~~(a)~~ A licensee's affiliate; or
- 2. ~~(b)~~ Employed jointly by a licensee and a company that is not the licensee's affiliate.

~~(b) Includes (c) "Nonaffiliated third party" shall include:~~

- 1. Any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in 12 U.S.C. 1843(k)(4)(H) and (I) of the federal Bank Holding Company Act; and
- 2. A company that is not the licensee's affiliate that jointly employs a person who is also employed by the licensee.

(25) "Nonpublic personal financial information":

(a) Means:

- 1. ~~(a)~~ Personally-identifiable financial information; and
- 2. ~~(b)~~ Any list, description, or other grouping of consumers, and publicly-available information pertaining to them that is derived using personally-identifying financial information that is not publicly available.

~~(b) Includes (c) "Nonpublic personal financial information" shall include~~ any list of individuals' names and street addresses that is derived in whole or in part using personally-identifiable financial information that is not publicly available, such as account numbers.

~~(c) Does not mean (d) "Nonpublic personal financial information" shall not include:~~

- 1. Health information subject to Section 18 of this administrative regulation;
- 2. Publicly-available information, except as included on a list described in paragraph (a)2 or (b) ~~or (c)~~ of this subsection; or
- 3. Any list, description, or other grouping of consumers and publicly-available information pertaining to them that is derived without using any personally-identifiable financial information that is not:
  - a. Publicly available, including any list of individuals' names and addresses that contains only publicly-available information;
  - b. Derived in whole or in part using personally-identifiable financial information that is not publicly available; and
  - c. Disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(26) "Nonpublic personal health information" means health information:

(a) That identifies an individual who is **the** subject of the information; or

(b) With ~~respect to which there is~~ a reasonable basis to believe that the information may be used to identify an individual.

(27) "Opt out" means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 14, 15, and 16 of this administrative regulation.

(28) "Personally-identifiable financial information":

(a) Means information:

1. ~~(a)~~ That a consumer provides to a licensee to obtain an insurance product or service from the licensee;

2. ~~(b)~~ About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

3. ~~(c)~~ That the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to a consumer.

~~(b) Includes (d) "Personally-identifiable financial information" shall include:~~

1. Information a consumer provides to a licensee on an application to obtain an insurance product or service;

2. Account balance information and payment history;

3. ~~The fact~~ That an individual is or has been one (1) of the licensee's customers or has obtained an insurance product or service from the licensee;

4. Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

5. Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

6. Any information the licensee collects through an Internet cookie, an information-collecting device from a Web server; and

7. Information from a consumer report.

~~(c) Does not mean (e) "Personally-identifiable financial information" shall not include:~~

1. Health information subject to Section 18 of this administrative regulation;

2. A list of names and addresses of customers of an entity that is not a financial institution; and

3. Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(29) "Publicly-available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(a) Federal, state, or local government records;

(b) Widely-distributed media; or

(c) Disclosures to the general public that are required to be made by federal, state, or local law.

(30) "Reasonable basis" to believe that information is lawfully made available to the general public means the licensee has taken steps to determine:

(a) That the information is the type that is available to the general public; and

(b) Whether an individual may direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(31) "Reasonably understandable" means a notice:

(a) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(b) Uses short explanatory sentences or bullet lists, if possible;

(c) Uses definite, concrete, everyday words and active voice, if possible;

(d) Avoids multiple negatives;

(e) Avoids legal and highly technical business terminology, if possible; and

(f) Avoids explanations that are imprecise and readily subject to different interpretations.

Section 2. Purpose and Scope. This administrative regulation governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees. (1) This administrative regulation:

(a) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(b) Describes the conditions under which a licensee may disclose nonpublic personal financial information and nonpublic personal health information about individuals to affiliates and nonaffiliated third parties; and

(c) Provides methods for individuals to prevent a licensee from disclosing that information.

(2) This administrative regulation applies to:

(a) Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family, or household purposes from licensees. ~~This administrative regulation shall not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes~~; and

(b) All nonpublic personal health information.

~~(3) This administrative regulation shall not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes.~~

Section 3. Compliance. A licensee domiciled in this state that is in compliance with this administrative regulation in a state that has not enacted laws or regulations that meet the requirements of Title V of the Gramm-Leach-Bliley Act (Pub.L. 102-106) may be ~~found[deemed]~~ to be in compliance with Title V of the Gramm-Leach-Bliley Act in ~~the[such]~~ other state.

Section 4. Rules of Construction. (1) The ~~Sample Clauses and Examples, [sample clauses,] and the Model Privacy Forms and General Instructions[Form]~~ in the material incorporated by reference are not exclusive. Compliance with an example, use of a sample clause, or model privacy form, to the extent applicable, shall constitute compliance with this administrative regulation.

(2) Licensees may rely on use of the model privacy form, consistent with the instructions, as a safe harbor compliance with the privacy notice content requirements of this administrative regulation.

(3) ~~[Sample Clauses and Examples, PVCY-01 (11/01 Edition).] The Sample[Samples] Clauses and Examples contains, incorporated by reference by this administrative regulation, contain~~ sample clauses and examples for the following:

(a) Establishment of a customer relationship, referenced in Section 5 of this administrative regulation;

(b) Exceptions to the required Initial Privacy Notices to Consumers, referenced in Section 5 of this administrative regulation;

(c) The annual privacy notice to customers, referenced in Section 6 of this administrative regulation;

(d) Customer terminations, referenced in Section 6 of this administrative regulation;

(e) Obtaining privacy notices, referenced in Section 7 of this administrative regulation;

(f) Samples clauses of the notice content required by Section 7 of this administrative regulation; and

(g) Joint consumer opt outs, referenced in Section 8 of this administrative regulation.

(4) Use of the Model Privacy ~~Forms and General Instructions[Form]~~ is not required. Licensees may continue to use other types of privacy notices, including notices that contain examples and sample clauses ~~from[in] the Sample Clauses and Examples if the [material incorporated by reference, provided that such] notices accurately describe the licensee's privacy practices and otherwise meet the notice content requirements of this administrative regulation. However, while licensees may continue to use privacy notices that contain examples or sample clauses, licensees may not rely on use of privacy notices with the sample clauses from the Sample Clauses and Examples[incorporated by reference]~~ as a safe harbor of compliance with the notice content requirements of this administrative regulation after July 1, 2019.

Section 5. Initial Privacy Notice to Consumers Required. (1) Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to a:

(a) Customer. An individual who becomes the licensee's

customer, not later than when the licensee establishes a customer relationship, except as provided in subsection (5) of this section; and

(b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16 of this administrative regulation.

(2) When initial notice to a consumer is not required. A licensee shall not be required to provide an initial notice to a consumer under subsection (1)(b) of this section if:

(a) ~~1. The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 15 and 16 of this administrative regulation; [f] and~~

~~2. The licensee does not have a customer relationship with the consumer; or~~

(b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3) ~~General rule of~~ when the licensee establishes a customer relationship. ~~[(a) General rule.] A licensee establishes a customer relationship when the licensee and the consumer enter into a continuing relationship.~~

(4) Existing customers. If an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of subsection (1) of this section as follows:

(a) The licensee may provide a revised policy notice, under Section 9 of this administrative regulation, that covers the customer's new insurance product or service; or

(b) If the initial, revised, or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee shall not be required to provide a new privacy notice under subsection (1) of this section.

(5) Exceptions to allow subsequent delivery of notice. A licensee may provide the initial notice required by subsection (1) of this section within a reasonable time after the licensee establishes a customer relationship if:

~~(a)[1.] Establishing the customer relationship is not at the customer's election; or~~

~~(b)[2.] Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.~~

(6) Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 10 of this administrative regulation. If the licensee uses a short-form initial notice for noncustomers according to Section 7(4) of this administrative regulation, the licensee may deliver its privacy notice according to Section 7(4)(c) of this administrative regulation.

Section 6. Annual Privacy Notice to Customers Required. (1) General rule. Except as provided in subsection (3) of this section, a licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. A licensee may define the twelve (12) consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(2) Termination of customer relationship. A licensee shall not be required to provide an annual notice to a former customer.

(3) Exception to annual privacy notice requirement.

(a) A licensee that provides nonpublic personal information to nonaffiliated third parties only in accordance with Sections 14, 15, or 16 of this administrative regulation and has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with

this section or Section 5 **of this administrative regulation** shall not be required to provide an annual disclosure under this section.

**(b) ~~[[At any time]~~** a licensee fails to comply with any of the exception criteria described in **paragraph (a) of this subsection ~~[(3)(a)]~~**, the licensee shall be required to provide the annual privacy notice required under subsection (1) **of this section**.

(4) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 10 of this administrative regulation.

Section 7. Information to be Included in Privacy Notices. (1) General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6, and 9 of this administrative regulation shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects;

(b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 15 and 16 of this administrative regulation;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 15 and 16 of this administrative regulation;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14 of this administrative regulation, and no other exception in Sections 15 and 16 of this administrative regulation applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under Section 11 of this administrative regulation to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under 15 U.S.C. 1681a(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(i) Any disclosure that the licensee makes under subsection (2) of this section.

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 15 and 16 of this administrative regulation, the licensee shall not be required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6 of this administrative regulation. If describing the categories of parties to whom disclosure is made, the licensee shall state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee shall satisfy the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

1. Information from the consumer;

2. Information about the consumer's transactions with the licensee or its affiliates;

3. Information about the consumer's transactions with

nonaffiliated third parties; and

4. Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses.

1. A licensee shall satisfy the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in subparagraph 3 of this paragraph, as applicable, and provides a few examples to illustrate the types of information in each category. These may include:

a. Information from the consumer, including application information, such as assets and income and identifying information, such as name, address, and Social Security number;

b. Transaction information, such as information about balances, payment history, and parties to the transaction; and

c. Information from consumer reports, such as a consumer's creditworthiness and credit history.

2. A licensee shall not categorize the information that it discloses by using only general terms, such as transaction information about the consumer.

3. If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

1. A licensee shall satisfy the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

2. Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term "financial products or services" if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking, or securities brokerage.

3. A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

4. Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 of this administrative regulation to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee shall satisfy the disclosure requirement of subsection (1)(e) of this section if it:

a. Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of subsection (1)(b) of this section, as applicable; and

b. States whether the third party is a service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or a financial institution with whom the licensee has a joint marketing agreement.

5. Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 15 and 16 of this administrative regulation, the licensee may simply state that fact, in addition to the information it shall provide under subsections (1)(a), (h), (i), and (2) of this section.

6. Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

a. Describes in general terms who is authorized to have access to the information; and

b. States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee shall not be

required to describe technical information about the safeguards it uses.

(4) Short-form initial notice with opt-out notice for noncustomers.

(a) A licensee may satisfy the initial notice requirements in Sections 5(1)(b) and 8(3) of this administrative regulation for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt-out notice as required in Section 8 of this administrative regulation.

(b) A short-form initial notice shall:

1. Be clear and conspicuous;  
2. State that the licensee's privacy notice is available upon request; and

3. Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short-form initial notice according to Section 10 of this administrative regulation. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10 of this administrative regulation.

(5) Future disclosures. The licensee's notice may include:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

Section 8. Form of Opt-out Notice to Consumers and Opt-out Methods. (1)(a) Form of opt-out notice. If a licensee is required to provide an opt-out notice under Section 11(1) of this administrative regulation, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

1. That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

2. That the consumer has the right to opt out of that disclosure; and

3. A reasonable means by which the consumer may exercise the opt-out right.

(b)1. Adequate opt-out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

a. Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Section 7(1)(b) and (c) of this administrative regulation, and states that the consumer may opt out of the disclosure of that information; and

b. Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt-out direction would apply.

2. Reasonable opt-out means. A licensee provides a reasonable means to exercise an opt-out right if it:

a. Designates check-off boxes in a prominent position on the relevant forms with the opt-out notice;

b. Includes a reply form together with the opt-out notice;

c. Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's Web site, if the consumer agrees to the electronic delivery of information; or

d. Provides a toll-free telephone number that consumers may call to opt out.

3. Unreasonable opt-out means. A licensee does not provide a reasonable means of opting out if:

a. The only means of opting out is for the consumer to write his or her own letter to exercise that opt-out right; or

b. The only means of opting out as described in any notice subsequent to the initial notice, is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

4. Specific opt-out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(2) Same form as initial notice permitted. A licensee may provide the opt-out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5 of this administrative regulation.

(3) Initial notice required when opt-out notice delivered subsequent to initial notice. If a licensee provides the opt-out notice later than required for the initial notice in accordance with Section 5 of this administrative regulation, the licensee shall also include a copy of the initial notice with the opt-out notice in writing or, if the consumer agrees, electronically.

(4) Joint relationships.

(a) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt-out notice. The licensee's opt-out notice shall explain how the licensee will treat an opt-out direction by a joint consumer.

(b) Any of the joint consumers may exercise the right to opt out. The licensee may either:

1. Treat an opt-out direction by a joint consumer as applying to all of the associated joint consumers; or

2. Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one (1) of the joint consumers to opt out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before it implements any opt-out direction.

(5) Time to comply with opt out. A licensee shall comply with a consumer's opt-out direction as soon as reasonably practicable after the licensee receives it.

(6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(7) Duration of consumer's opt-out direction.

(a) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt-out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt-out direction that applied to the former relationship does not apply to the new relationship.

(8) Delivery. When a licensee is required to deliver an opt-out notice by this section, the licensee shall deliver it according to Section 10 of this administrative regulation.

Section 9. Revised Privacy Notices. (1) General rule. Except as otherwise authorized in this administrative regulation, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5 of this administrative regulation, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt-out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2)(a) Except as otherwise permitted by Sections 14, 15, and 16 of this administrative regulation, a licensee shall provide a revised notice before it:

1. Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

2. Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

3. Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt-out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

Section 10. Delivery. (1) How to provide notices. A licensee shall provide any notices that this administrative regulation requires so that each consumer **may[can]** reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) Illustrations of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

1. Hand-delivers a printed copy of the notice to the consumer;

2. Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing, or other written communication;

3. For a consumer who conducts transactions electronically, **posts[post]** the notice on the electronic site and **requires[require]** the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service; or

4. For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, **posts[post]** the notice and **requires[require]** the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) Illustrations of unreasonable expectation of actual notice. A licensee shall not, **however,** reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

1. Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

2. Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's Web site to access insurance products and services electronically and agrees to receive notices at the Web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the Web site; or

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) Oral description of notice insufficient. A licensee may not provide any notice required by this administrative regulation solely by orally explaining the notice, either in person or over the telephone.

(5) Retention or accessibility of notices for customers.

(a) For customers only, a licensee shall provide the initial notice required by Section 5(1)(a) of this administrative regulation, the annual notice required by Section 6(1) of this administrative regulation, and the revised notice required by Section 9 of this administrative regulation so that the customer **may[can]** retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer **may[can]** retain it or obtain it later if the licensee:

1. Hand-delivers a printed copy of the notice to the customer;

2. Mails a printed copy of the notice to the last known address of the customer; or

3. Makes its current privacy notice available on a Web site, or a link to another Web site, for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the Web site.

(6) Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one (1) or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual, and revised notice requirements of Sections 5(1), 6(1), and 9 of this administrative regulation, respectively, by providing one (1) notice to those consumers jointly.

Section 11. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties. (1)(a) Conditions for disclosure. Except as otherwise authorized in this administrative regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

1. The licensee has provided to the consumer an initial notice as required under Section 5 of this administrative regulation;

2. The licensee has provided to the consumer an opt-out notice as required in Section 8 of this administrative regulation;

3. The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

4. The consumer does not opt out.

(b) A licensee provides a consumer with a reasonable opportunity to opt out if:

1. By mail. The licensee mails the notices required in subsection (1)(a) **of this section** to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

2. By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in subsection (1)(a) **of this section** electronically, and the licensee allows the customer to opt out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

3. Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in subsection (1)(a) **of this section** at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(2) Application of opt out to all consumers and all nonpublic personal financial information.

(a) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(b) Unless a licensee complies with this section, the licensee shall not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

Section 12. Limits on Rediscovery and Reuse of Nonpublic Personal Financial Information. (1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Section 15 or 16 of this administrative regulation, the licensee's disclosure and use of that information shall be limited as follows:

1. The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

2. The licensee may disclose the information to its affiliates.

but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

3. The licensee may disclose and use the information ~~[pursuant to an exception in Section 15 or 16 of this administrative regulation.]~~ in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee shall disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(2)(a) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Section 15 or 16 of this administrative regulation, the licensee may disclose the information only:

1. To the affiliates of the financial institution from which the licensee received the information;

2. To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

3. To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(b) If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Section 15 or 16 of this administrative regulation:

1. The licensee may use that list for its own purposes; and

2. The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list ~~may[could]~~ have lawfully disclosed the list to that third party. ~~[That is,]~~ The licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt-out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Section 15 or 16 of this administrative regulation, such as to the licensee's attorneys or accountants.

(3) Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Section 15 or 16 of this administrative regulation, the third party may disclose and use that information only as follows:

(a) The third party may disclose the information to the licensee's affiliates;

(b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) The third party may disclose and use the information pursuant to an exception in Section 15 or 16 of this administrative regulation in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Section 15 or 16 of this administrative regulation, the third party may disclose the information only:

(a) To the licensee's affiliates;

(b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

Section 13. Limits on Sharing Account Number Information for Marketing Purposes. (1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an

affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(2) Exceptions. Subsection (1) of this section shall not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3)(a) A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

Section 14. Exception to Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing. (1) General rule.

(a) The opt-out requirements in Sections 8 and 11 of this administrative regulation shall not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

1. Provides the initial notice in accordance with Section 5 of this administrative regulation; and

2. Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Section 15 or 16 of this administrative regulation in the ordinary course of business to carry out those purposes.

(b) If a licensee discloses nonpublic personal financial information under ~~this section[Section 14]~~ to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution shall meet the requirements of ~~paragraph (a)2 of this subsection[Section 14(a)(2)]~~ if:

1. It prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing; or

2. ~~Is~~ under an exception in Section 15 or 16 of this administrative regulation in the ordinary course of business to carry out that joint marketing.

(2) Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under subsection (1) of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one (1) or more financial institutions.

Section 15. Exceptions to Notice and Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions. Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section 5(1)(b) of this administrative regulation, the opt out in Sections 8 and 11 of this administrative regulation, and ~~for the~~ service providers and joint marketing in Section 14 of this administrative regulation shall not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing an insurance product or service

that a consumer requests or authorizes:

(2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(3) A proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transaction related to a transaction of the consumer; or

(4) Reinsurance or stop loss or excess loss insurance.

Section 16. Other Exceptions to Notice and Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information. (1) Exceptions to opt-out requirements. The requirements for initial notice to consumers in Section 5(1)(b) of this administrative regulation, the opt out in Sections 8 and 11 of this administrative regulation, and for the service providers and joint marketing in Section 14 of this administrative regulation shall not apply if a licensee discloses nonpublic personal financial information:

(a) With the consent or at the direction of the consumer, if the consumer has not revoked the consent or direction;

(b)1. To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product, or transaction;

2. To protect against or prevent actual or potential fraud or unauthorized transactions;

3. For required institutional risk control or for resolving consumer disputes or inquiries;

4. To persons holding a legal or beneficial interest relating to the consumer; or

5. To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(c) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants, and auditors;

(d) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 to 3422, to law enforcement agencies, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. 5311 to 5330, Records and Reports on Monetary Instruments and Transactions, and 12 U.S.C. 1951 to 1959, Financial Recordkeeping, a state insurance authority, and the Federal Trade Commission, self-regulatory organizations or for an investigation on a matter related to public safety;

(e)1. To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act, 15 U.S.C. 1681 to 1681u; or

2. From a consumer report reported by a consumer reporting agency;

(f) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(g)1. To comply with federal, state or local laws, rules and other applicable legal requirements;

2. To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

3. To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

4. For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

(2) Revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 8(6) of this administrative regulation.

(3) Licensees in liquidation or rehabilitation according to KRS

Chapter 304.33 shall be exempt from the notice provisions of this administrative regulation.

Section 17. Privacy Notices to Group Policyholders. Unless a licensee is providing privacy notices directly to covered individuals described in Section 22 of this administrative regulation~~5(4)(c)~~, a licensee shall provide initial, annual, and revised notices to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, or workers' compensation policyholder, in the manner described in Sections 5 through 10 of this administrative regulation, describing the licensee's privacy practices with respect to nonpublic personal information about individuals covered under the policies, contracts, or plans.

Section 18. When Authorization Required for Disclosure of Nonpublic Personal Health Information. (1) A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer about whom such information is sought to be disclosed.

(2) Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of such information by a licensee for the performance of the following insurance functions by or on behalf of the licensee: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud; misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; ratemaking and guaranty fund function; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service function; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers' compensation policy or program; activities in connection with a sale, merger, transfer, or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rule which is promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. 160 to 164; disclosure that is required, or is one (1) of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process.

(3) Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

Section 19. Authorizations. (1) A valid authorization to disclose nonpublic personal health information pursuant to Section 18 of this administrative regulation shall be in written or electronic form and shall contain the following:

(a) The identity of the consumer or customer who is the subject of the nonpublic personal health information;

(b) A general description of the types of information to be disclosed;

(c) General descriptions of the parties to whom disclosure shall be made, the purpose of the disclosure, and how the information will be used;

(d) The signature of the affected consumer or customer or the individual who is legally empowered to grant authority and the date signed;

(e) Notice of the length of time for which the authorization is valid, not to exceed twenty-four (24) months; and

(f) Notice that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.



(2) A consumer or customer who is subject of nonpublic personal health information may revoke an authorization provided pursuant to this section at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

(3) A licensee shall retain the authorization or copy thereof in the record of the affected individual.

Section 20. Authorization Request Delivery. ~~[(1)]~~ A request for authorization and an authorization form may be delivered to a consumer or customer as part of an opt-out notice pursuant to Section 10 of this administrative regulation, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to Section 18(1) of this administrative regulation.

Section 21. Relationship to Federal Rules. Regardless of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act ("HIPAA") privacy rule as promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. 160 to 164, if a licensee complies with all requirements of 45 C.F.R. 160 to 164, the licensee shall not be subject to Sections 18, 19, and 20 of this administrative regulation.

Section 22. Nondiscrimination and Exemption from Notice and Opt Out Requirements. (1) A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure or has not granted authorization for the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this administrative regulation.

(2) A licensee shall not be subject to the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if:

(a) The licensee is an employee, agent, or other representative of another licensee, "the principal";

(b) The principal otherwise complies with, and provides the notices required by, the provisions of this administrative regulation; and

(c) The licensee does not disclose any nonpublic personal financial information to any person other than the principal or its affiliates in a manner permitted by this administrative regulation.

(3) Pursuant to subsection (2) of this section, "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus broker in Kentucky, but only for the surplus lines placements placed pursuant to KRS 304.10.

(4) A surplus lines broker or surplus lines insurer shall be in compliance with the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if:

(a) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 14 of this administrative regulation, except as permitted by Section 15 or 16 of this administrative regulation; and

(b) The broker or insurer delivers a notice to a consumer when a customer relationship is established on which the following is printed in sixteen (16) point type:

"PRIVACY NOTICE - NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW."

Section 23. Violation. A violation of this administrative regulation shall constitute an unfair trade practice in the business of insurance and shall subject the licensee to a civil penalty

authorized by KRS 304.99-020.

Section 24. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) PVCY-01, "Sample Clauses and Examples", (Edition 11/01)[]; and

(b) "Model Privacy Forms & General Instructions", May 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Definitions. (1) "Affiliate" means a company that controls, is controlled by, or is under common control with another company.

(2) "Annually" means at least once in a period of twelve (12) consecutive months during which a customer relationship exists.

(3) "Clear and conspicuous" means that a notice that is reasonably understandable and designed to call attention to the nature and significance of information in the notice.

(4) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(5) "Executive Director" means the Commissioner of the Kentucky Office of Insurance.

(6) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or similar organization.

(7) "Consumer" means:

(a) An individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information; or

(b) That individual's legal representative.

(8) "Consumer reporting agency" is defined in 15 U.S.C. 1681a(f) of the federal Fair Credit Reporting Act.

(9) "Continuing relationship" means a relationship between a customer and a licensee if:

(a) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(b) The consumer obtains financial, investment, or economic advisory services relating to an insurance product or service from the licensee for a fee.

(10) "Control" means:

(a) Ownership, control, or power to vote twenty-five (25) percent or more of the outstanding shares of any class of voting security of the company, or acting through one (1) or more other persons;

(b) Control over the election of a majority of directors, trustees, or general partners, or individuals exercising similar functions of the company; or

(c) The power to exercise a controlling influence over the management or policies of the company.

(11) "Customer" means a consumer who has a customer relationship with a licensee.

(12) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one (1) or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(13) "Designed to call attention" means that the notice:

(a) Uses a plain-language heading to call attention to the notice;

(b) Uses a typeface and type size that are easy to read;

(c) Provides wide margins and ample line spacing;

(d) Uses boldface or italics for key words; and

(e) Is in a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(f) If a licensee provides a notice on an Internet Web page, "designed to call attention" means that the notice uses text or visual cues to encourage scrolling down the page to view the entire notice, if necessary, and ensures that other elements on the Web

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site do not distract attention from the notice, and the licensee either:

1. Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or
2. Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(14) "Financial institution" means any institution engaging in activities that are financial in nature or incidental to financial activities as described in 12 U.S.C. 1843(k).

(15) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to a financial activity described in 12 U.S.C. 1843(k).

(16) "Former customer" means an individual with whom a licensee no longer has a continuing relationship.

(17) "Insurance product or service" means any product or service that is offered by a licensee, pursuant to KRS Chapter 304.

(18) "Joint agreement" means a written contract pursuant to which a licensee and one (1) or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

(19) "Licensee" means all insurers holding a certificate of authority, licensed producers, companies, or business entities licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Kentucky Insurance Code, KRS Chapter 304.

(20) "Necessary to effect, administer, or enforce a transaction" means that the disclosure is:

(a) Required, or is one (1) of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(b) Required, or is a usual, appropriate, or acceptable method:

1. To carry out the transaction, the product, or the service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the insurance product or service;

2. To administer or service benefits or claims relating to the transaction, product, or service business of which it is a part;

3. To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

4. To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

5. To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance:

a. Account administration;

b. Reporting;

c. Investigating or preventing fraud or material misrepresentation;

d. Processing premium payments;

e. Processing insurance claims;

f. Administering insurance benefits, such as utilization review activities;

g. Participating in research projects; or

h. As otherwise required or specifically permitted by federal or state law; or

6. In connection with:

a. The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check or account number, or by other payment means;

b. The transfer of receivables, accounts, or interests; or

c. The audit of debit, credit, or other payment information.

(21) "Nonaffiliated third party" means any person who is not:

(a) A licensee's affiliate; or

(b) Employed jointly by a licensee and a company that is not the licensee's affiliate.

(22) "Nonpublic personal financial information" means:

(a) Personally identifiable financial information; and

(b) Any list, description, or other grouping of consumers, and publicly available information pertaining to them that is derived using personally-identifying financial information that is not publicly available.

(23) "Opt out" means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 15, 16, and 17 of this administrative regulation.

(24) "Personally identifiable financial information" means information:

(a) That a consumer provides to a licensee to obtain an insurance product or service from the licensee;

(b) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(c) That the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to a consumer.

(25) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(a) Federal, state, or local government records;

(b) Widely distributed media; or

(c) Disclosures to the general public that are required to be made by federal, state, or local law.

(26) "Reasonable basis" to believe that information is lawfully made available to the general public means the licensee has taken steps to determine:

(a) That the information is the type that is available to the general public; and

(b) Whether an individual may direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(27) "Reasonably understandable" means a notice:

(a) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(b) Uses short explanatory sentences or bullet lists, if possible;

(c) Uses definite, concrete, everyday words and active voice, if possible;

(d) Avoids multiple negatives;

(e) Avoids legal and highly technical business terminology, if possible; and

(f) Avoids explanations that are imprecise and readily subject to different interpretations.

Section 2. This administrative regulation governs the treatment of nonpublic personal financial information about individuals by all licensees of the state insurance office. This administrative regulation:

(1) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(2) Describes the conditions under which a licensee may disclose nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties;

(3) Provides methods for individuals to prevent a licensee from disclosing that information; and

(4) Applies to nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This administrative regulation shall not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes.

Section 3. A licensee domiciled in this state that is in compliance with this administrative regulation in a state that has not enacted laws or regulations that meet the requirements of 15 U.S.C. 6801 to 6810 of the Gramm-Leach-Bliley Act may be deemed to be in compliance with 15 U.S.C. 6801 to 6810 of the Gramm-Leach-Bliley Act in such other state.

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Section 4. The examples and sample clauses in the material incorporated by reference are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, shall constitute compliance with this administrative regulation.

Section 5. Requirements. (1) Consumer.

(a) A "consumer" shall include:

1. An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment, or economic advisory services relating to an insurance product or service, regardless of whether the licensee establishes an ongoing advisory relationship;

2. An applicant for insurance prior to the inception of insurance coverage;

3. An individual subject to disclosure by a licensee of nonpublic personal financial information to a nonaffiliated third party, other than as permitted under Sections 15, 16, and 17 of this administrative regulation, if:

a. The individual is a beneficiary of a life insurance policy underwritten by the licensee;

b. The individual is a claimant under an insurance policy issued by the licensee;

c. The individual is an insured or annuitant under an insurance policy or an annuity issued by the licensee; or

d. The individual is a mortgagor of a mortgage covered under a mortgage insurance policy.

(b) An individual shall not be a "consumer" solely on the basis that:

1. An individual is a consumer of another financial institution and the licensee is acting as agent for, or provides processing or other services to, that financial institution;

2. An individual is a beneficiary of a trust for which the licensee is a trustee;

3. An individual has designated the licensee as trustee for a trust; or

(c) An individual shall not be a "consumer" solely based on the status listed in subparagraph 2a through c of this paragraph, if:

1. The licensee provides the initial, annual, and revised notices under Sections 6, 7, and 10 of this administrative regulation to the plan sponsor, group, or blanket insurance policyholder or group annuity contract holder, workers' compensation plan participant; and

2. The licensee does not disclose to a nonaffiliated third party nonpublic personal financial information, other than as permitted under Sections 15, 16, and 17 of this administrative regulation, about an individual who is:

a. A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer, or fiduciary;

b. Covered under a group or blanket life insurance policy or group annuity contract issued by the licensee; or

c. A beneficiary in a workers' compensation plan.

(d) The individuals described in paragraph (c)2a through c of this subsection shall be consumers of a licensee if the licensee fails to meet all the conditions of paragraph (c)1 and 2 of this subsection.

(2) Nonpublic personal financial information.

(a) "Nonpublic personal financial information" shall include any list of individuals' names and street addresses that is derived in whole or in part using personally-identifiable financial information that is not publicly available, such as account numbers.

(b) "Nonpublic personal financial information" shall not include:

1. Health information;

2. Publicly available information, except as included on a list described in Section 1(22)(b) of this administrative regulation or paragraph (a) of this subsection; or

3. Any list, description, or other grouping of consumers and publicly available information pertaining to them that is derived without using any personally-identifiable financial information that is not:

a. Publicly available, including any list of individuals' names and addresses that contains only publicly available information;

b. Derived in whole or in part using personally-identifiable

financial information that is not publicly available; and

c. Disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(3) "Nonaffiliated third party" shall include:

(a) Any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in 12 U.S.C. 1843(k)(4)(H) and (I) of the federal Bank Holding Company Act; and

(b) A company that is not the licensee's affiliate that jointly employs a person who is also employed by the licensee.

(4) "Financial institution" shall not include:

(a) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under 7 U.S.C. 1 to 27f of the Commodity Exchange Act;

(b) The federal Agricultural Mortgage Corporation or any entity chartered and operating under 12 U.S.C. 2001-2279cc of the Farm Credit Act of 1971; or

(c) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales, including sales of servicing rights, or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(5) "Financial service" shall include a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(6) "Insurance service" shall include a licensee's evaluation, brokerage, or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

(7) Personally-identifiable financial information.

(a) "Personally-identifiable financial information" shall include:

1. Information a consumer provides to a licensee on an application to obtain an insurance product or service;

2. Account balance information and payment history;

3. The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

4. Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

5. Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

6. Any information the licensee collects through an Internet cookie, an information-collecting device from a Web server; and

7. Information from a consumer report.

(b) "Personally-identifiable financial information" shall not include:

1. Health information;

2. A list of names and addresses of customers of an entity that is not a financial institution; and

3. Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(8) Licensee.

(a) A licensee shall not be subject to the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if the licensee is an employee, agent, or other representative of another licensee, "the principal", and:

1. The principal otherwise complies with, and provides the notices required by, the provisions of this administrative regulation; and

2. The licensee does not disclose any nonpublic personal financial information to any person other than the principal or its affiliates in a manner permitted by this administrative regulation.

(b) Subject to paragraph (a) of this subsection, "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus broker in Kentucky, but only in regard to the surplus lines placements placed pursuant to KRS 304.10.

(c) A surplus lines broker or surplus lines insurer shall be in compliance with the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if:

1. The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 15 of this administrative regulation, except as permitted by Section 16 or 17 of this administrative regulation; and

2. The broker or insurer delivers a notice to a consumer when a customer relationship is established on which the following is printed in sixteen (16) point type:

~~"PRIVACY NOTICE - NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW."~~

(d) A licensee shall not include registered service contract makers as defined in 806 KAR 5:060.

(9) Continuing relationship. A consumer shall not be deemed to have a continuing relationship with the licensee if:

(a) The consumer applies for insurance but does not purchase the insurance;

(b) The licensee sells the consumer airline travel insurance in an isolated transaction;

(c) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(d) The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a settlement option involving an ongoing relationship with the licensee;

(e) The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(f) The customer's policy has lapsed, expired, or is otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or administrative regulation, communication at the direction of a state or federal authority, or promotional materials;

(g) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(h) The individual's last known address according to the licensee's records is deemed invalid. An address of record shall be deemed invalid if mail sent to that address by the licensee is returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual are unsuccessful.

~~Section 6. Initial Privacy Notice to Consumers Required. (1) Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to a:~~

(a) ~~Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in subsection (5) of this section; and~~

(b) ~~Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 16 and 17 of this administrative regulation.~~

(2) ~~When initial notice to a consumer is not required. A licensee shall not be required to provide an initial notice to a consumer under subsection (1)(b) of this section if:~~

(a) ~~The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 16 and 17 of this administrative regulation, and the licensee does not have a customer relationship with the consumer; or~~

(b) ~~A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.~~

(3) ~~When the licensee establishes a customer relationship:~~

(a) ~~General rule. A licensee establishes a customer relationship when the licensee and the consumer enter into a continuing relationship.~~

(b) ~~Establishing customer relationship examples are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.~~

(4) ~~Existing customers. If an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of subsection (1) of this section as follows:~~

(a) ~~The licensee may provide a revised policy notice, under Section 10 of this administrative regulation, that covers the customer's new insurance product or service; or~~

(b) ~~If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee shall not be required to provide a new privacy notice under subsection (1) of this section.~~

(5) ~~Exceptions to allow subsequent delivery of notice.~~

(a) ~~A licensee may provide the initial notice required by subsection (1)(a) of this section within a reasonable time after the licensee establishes a customer relationship if:~~

1. ~~Establishing the customer relationship is not at the customer's election; or~~

2. ~~Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.~~

(b) ~~Examples of exceptions are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.~~

(6) ~~Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 11 of this administrative regulation. If the licensee uses a short-form initial notice for noncustomers according to Section 8(4) of this administrative regulation, the licensee may deliver its privacy notice according to Section 8(4)(c) of this administrative regulation.~~

~~Section 7. Annual Privacy Notice to Customers Required.~~

(1)(a) ~~General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. A licensee may define the twelve (12) consecutive month period, but the licensee shall apply it to the customer on a consistent basis.~~

(b) ~~An example of an annual privacy notice is contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.~~

(2)(a) ~~Termination of customer relationship. A licensee shall not be required to provide an annual notice to a former customer.~~

(b) ~~Examples of customer terminations are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.~~

(3) ~~Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 11 of this administrative regulation.~~

~~Section 8. Information to be Included in Privacy Notices. (1)~~

~~General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 6, 7, and 10 of this administrative regulation shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:~~

(a) ~~The categories of nonpublic personal financial information that the licensee collects;~~

(b) ~~The categories of nonpublic personal financial information that the licensee discloses;~~

(c) ~~The categories of affiliates and nonaffiliated third parties to~~

whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 16 and 17 of this administrative regulation;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 16 and 17 of this administrative regulation;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 15 of this administrative regulation, and no other exception in Sections 16 and 17 of this administrative regulation applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under Section 12 of this administrative regulation to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under 15 U.S.C. 1681a(d)(2)(A)(iii) of the federal Fair Credit Reporting Act, notices regarding the ability to opt out of disclosures of information among affiliates;

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(i) Any disclosure that the licensee makes under subsection (2) of this section.

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 16 and 17 of this administrative regulation, the licensee shall not be required to list those exceptions in the initial or annual privacy notices required by Sections 6 and 7 of this administrative regulation. If describing the categories of parties to whom disclosure is made, the licensee shall state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee shall satisfy the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

1. Information from the consumer;

2. Information about the consumer's transactions with the licensee or its affiliates;

3. Information about the consumer's transactions with nonaffiliated third parties; and

4. Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses.

1. A licensee shall satisfy the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in subparagraph 3 of this paragraph, as applicable, and provides a few examples to illustrate the types of information in each category. These may include:

a. Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and Social Security number;

b. Transaction information, such as information about balances, payment history and parties to the transaction; and

c. Information from consumer reports, such as a consumer's creditworthiness and credit history.

2. A licensee shall not categorize the information that it discloses by using only general terms, such as transaction information about the consumer.

3. If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it

collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

1. A licensee shall satisfy the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

2. Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term "financial products or services" if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

3. A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

4. Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 15 of this administrative regulation to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee shall satisfy the disclosure requirement of subsection (1)(e) of this section if it:

a. Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of subsection (1)(b) of this section, as applicable; and

b. States whether the third party is a service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or a financial institution with whom the licensee has a joint marketing agreement.

5. Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 16 and 17 of this administrative regulation, the licensee may simply state that fact, in addition to the information it shall provide under subsections (1)(a), (h), (i), and (2) of this section.

6. Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

a. Describes in general terms who is authorized to have access to the information; and

b. States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee shall not be required to describe technical information about the safeguards it uses.

(4) Short form initial notice with opt out notice for noncustomers.

(a) A licensee may satisfy the initial notice requirements in Sections 6(1)(b) and 9(3) of this administrative regulation for a consumer who is not a customer by providing a short form initial notice at the same time as the licensee delivers an opt out notice as required in Section 9 of this administrative regulation.

(b) A short form initial notice shall:

1. Be clear and conspicuous;

2. State that the licensee's privacy notice is available upon request; and

3. Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short form initial notice according to Section 11 of this administrative regulation. The licensee is not required to deliver its privacy notice with its short form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short form notice requests the licensee's privacy notice, the licensee shall deliver its privacy

notice according to Section 11 of this administrative regulation.

(d) Examples of obtaining privacy notice are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(5) Future disclosures. The licensee's notice may include:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(6) Sample clauses. Sample clauses illustrating some of the notice content required by this section are included in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

Section 9. Form of Opt-out Notice to Consumers and Opt-out Methods. (1)(a) Form of opt-out notice. If a licensee is required to provide an opt-out notice under Section 12(1) of this administrative regulation, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

1. That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

2. That the consumer has the right to opt out of that disclosure; and

3. A reasonable means by which the consumer may exercise the opt-out right.

(b)1. Adequate opt-out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

a. Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Section 8(1)(b) and (c) of this administrative regulation, and states that the consumer may opt out of the disclosure of that information; and

b. Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt-out direction would apply.

2. Reasonable opt-out means. A licensee provides a reasonable means to exercise an opt-out right if it:

a. Designates check-off boxes in a prominent position on the relevant forms with the opt-out notice;

b. Includes a reply form together with the opt-out notice;

c. Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's Web site, if the consumer agrees to the electronic delivery of information; or

d. Provides a toll-free telephone number that consumers may call to opt out.

3. Unreasonable opt-out means. A licensee does not provide a reasonable means of opting out if:

a. The only means of opting out is for the consumer to write his or her own letter to exercise that opt-out right; or

b. The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

4. Specific opt-out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(2) Same form as initial notice permitted. A licensee may provide the opt-out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 6 of this administrative regulation.

(3) Initial notice required when opt-out notice delivered subsequent to initial notice. If a licensee provides the opt-out notice later than required for the initial notice in accordance with Section 6 of this administrative regulation, the licensee shall also include a copy of the initial notice with the opt-out notice in writing or, if the consumer agrees, electronically.

(4) Joint relationships.

(a) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt-out notice. The licensee's opt-out notice shall explain how the licensee will treat an opt-out direction by a joint consumer.

(b) Any of the joint consumers may exercise the right to opt out. The licensee may either:

1. Treat an opt-out direction by a joint consumer as applying to all of the associated joint consumers; or

2. Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one (1) of the joint consumers to opt out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before it implements any opt-out direction.

(e) Example of joint consumers opt out is contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(5) Time to comply with opt out. A licensee shall comply with a consumer's opt-out direction as soon as reasonably practicable after the licensee receives it.

(6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(7) Duration of consumer's opt-out direction.

(a) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt-out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt-out direction that applied to the former relationship does not apply to the new relationship.

(8) Delivery. When a licensee is required to deliver an opt-out notice by this section, the licensee shall deliver it according to Section 11 of this administrative regulation.

Section 10. Revised Privacy Notices. (1) General rule. Except as otherwise authorized in this administrative regulation, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 6 of this administrative regulation, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt-out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2)(a) Except as otherwise permitted by Sections 15, 16, and 17 of this administrative regulation, a licensee shall provide a revised notice before it:

1. Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

2. Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

3. Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt-out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

(3) Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 11 of this administrative regulation.

Section 11. Delivery. (1) How to provide notices. A licensee shall provide any notices that this administrative regulation requires

so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) Illustrations of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

1. Hand-delivers a printed copy of the notice to the consumer;
2. Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;
3. For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service; or
4. For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) Illustrations of unreasonable expectation of actual notice. A licensee shall not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

1. Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or
2. Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's Web site to access insurance products and services electronically and agrees to receive notices at the Web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the Web site; or

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) Oral description of notice insufficient. A licensee may not provide any notice required by this administrative regulation solely by orally explaining the notice, either in person or over the telephone.

(5) Retention or accessibility of notices for customers.

(a) For customers only, a licensee shall provide the initial notice required by Section 6(1)(a) of this administrative regulation, the annual notice required by Section 7(1) of this administrative regulation, and the revised notice required by Section 10 of this administrative regulation so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

1. Hand-delivers a printed copy of the notice to the customer;
2. Mails a printed copy of the notice to the last known address of the customer; or
3. Makes its current privacy notice available on a Web site, or a link to another Web site, for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the Web site.

(6) Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one (1) or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Sections 6(1), 7(1), and 10 of this administrative regulation, respectively, by providing one (1) notice to those consumers jointly.

Section 12. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties. (1)(a) Conditions for disclosure. Except as otherwise authorized in this administrative regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

1. The licensee has provided to the consumer an initial notice as required under Section 5 of this administrative regulation;
2. The licensee has provided to the consumer an opt-out notice as required in Section 8 of this administrative regulation;
3. The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
4. The consumer does not opt out.

(b) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

1. By mail. The licensee mails the notices required in paragraph (a) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

2. By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in paragraph (a) of this subsection electronically, and the licensee allows the customer to opt out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

3. Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in paragraph (a) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(2) Application of opt out to all consumers and all nonpublic personal financial information.

(a) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(b) Unless a licensee complies with this section, the licensee shall not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

Section 13. Limits on Rediscovery and Reuse of Nonpublic Personal Financial Information. (1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Section 16 or 17 of this administrative regulation, the licensee's disclosure and use of that information shall be limited as follows:

1. The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

2. The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

3. The licensee may disclose and use the information pursuant to an exception in Section 16 or 17 of this administrative regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee shall disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or

use that information for its own marketing purposes.

(2)(a) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Section 16 or 17 of this administrative regulation, the licensee may disclose the information only:

1. To the affiliates of the financial institution from which the licensee received the information;
2. To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and
3. To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(b) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Section 16 or 17 of this administrative regulation:

1. The licensee may use that list for its own purposes; and
2. The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt-out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Section 16 or 17 of this administrative regulation, such as to the licensee's attorneys or accountants.

(3) Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Section 16 or 17 of this administrative regulation, the third party may disclose and use that information only as follows:

- (a) The third party may disclose the information to the licensee's affiliates;
- (b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and
- (c) The third party may disclose and use the information pursuant to an exception in Section 16 or 17 of this administrative regulation in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Section 16 or 17 of this administrative regulation, the third party may disclose the information only:

- (a) To the licensee's affiliates;
- (b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and
- (c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

Section 14. Limits on Sharing Account Number Information for Marketing Purposes. (1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(2) Exceptions. Subsection (1) of this section shall not apply if a licensee discloses a policy number or similar form of access number or access code:

- (a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;
- (b) To a licensee who is a producer solely in order to perform

marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3) Examples:

(a) Policy number. A policy number, or similar form of access number or access code, shall not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) Policy or transaction account. A policy or transaction account shall be any account other than a deposit account or a credit card account. A policy or transaction account shall not include an account to which third parties cannot initiate charges.

Section 15. Exception to Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing. (1) General rule.

(a) The opt-out requirements in Sections 9 and 12 of this administrative regulation shall not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

1. Provides the initial notice in accordance with Section 6 of this administrative regulation; and
2. Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Section 16 or 17 of this administrative regulation in the ordinary course of business to carry out those purposes.

(b) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution shall meet the requirements of paragraph (a)2 of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Section 16 or 17 of this administrative regulation in the ordinary course of business to carry out that joint marketing.

(2) Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under subsection (1) of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one (1) or more financial institutions.

Section 16. Exceptions to Notice and Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions. Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section 6(1)(b) of this administrative regulation, the opt out in Sections 9 and 12 of this administrative regulation, and service providers and joint marketing in Section 15 of this administrative regulation shall not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

- (1) Servicing or processing an insurance product or service that a consumer requests or authorizes;
- (2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;
- (3) A proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transaction related to a transaction of the consumer; or
- (4) Reinsurance or stop loss or excess loss insurance.

Section 17. Other Exceptions to Notice and Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information. (1) Exceptions to opt-out requirements. The requirements for initial notice to consumers in Section 6(1)(b) of this administrative regulation, the opt-out in Sections 9 and 12 of



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~~this administrative regulation, and service providers and joint marketing in Section 15 of this administrative regulation shall not apply if a licensee discloses nonpublic personal financial information:~~

~~(a) With the consent or at the direction of the consumer, if the consumer has not revoked the consent or direction;~~

~~(b)1. To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;~~

~~2. To protect against or prevent actual or potential fraud or unauthorized transactions;~~

~~3. For required institutional risk control or for resolving consumer disputes or inquiries;~~

~~4. To persons holding a legal or beneficial interest relating to the consumer; or~~

~~5. To persons acting in a fiduciary or representative capacity on behalf of the consumer;~~

~~(c) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;~~

~~(d) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 to 3422, to law enforcement agencies, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. 5311 to 5330, Records and Reports on Monetary Instruments and Transactions, and 12 U.S.C. 1951 to 1959, Financial Recordkeeping, a state insurance authority, and the Federal Trade Commission, self-regulatory organizations or for an investigation on a matter related to public safety;~~

~~(e)1. To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act, 15 U.S.C. 1681 to 1681u; or~~

~~2. From a consumer report reported by a consumer reporting agency;~~

~~(f) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;~~

~~(g)1. To comply with federal, state or local laws, rules and other applicable legal requirements;~~

~~2. To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;~~

~~3. To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or~~

~~4. For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.~~

~~(2) Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 9(6) of this administrative regulation.~~

~~(3) Licensees in liquidation or rehabilitation according to KRS Chapter 304.33 shall be exempt from the notice provisions of this administrative regulation.~~

~~Section 18. Protection of Fair Credit Reporting Act. This administrative regulation shall not be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act, 15 U.S.C. 1681 to 1681u, and an inference shall not be drawn on the basis of the provisions of this administrative regulation regarding whether information is transaction or experience information under 15 U.S.C. 1681a of the Fair Credit Reporting Act.~~

~~Section 19. Nondiscrimination. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure or has not~~

~~granted authorization for the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this administrative regulation.~~

~~Section 20. Violation. A violation of this administrative regulation shall constitute an unfair trade practice in the business of insurance and shall subject the licensee to a civil penalty authorized by KRS 304.99-020.~~

~~Section 21. Severability. If any section or portion of a section of this administrative regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of this administrative regulation or the applicability of the provision to other persons or circumstances shall not be affected.~~

~~Section 22. Effective Date. (1) Effective date. This administrative regulation is effective upon approval.~~

~~(2) Two (2) year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Section 15(1)(a)2 of this administrative regulation of this administrative regulation, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.~~

~~Section 23. Incorporation by Reference. (1) The following material is incorporated by reference: PVCY-01, "Sample Clauses and Examples (Edition 11/01)".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (28 Ky.R. 1523; Am. 1828; eff. 2-11-2002; TAm eff. 8-9-2007.)~~

~~NANCY G. ATKINS, Commissioner  
DAVID A. DICKERSON, Secretary~~

~~APPROVED BY AGENCY: September 14, 2017~~

~~FILED WITH LRC: September 15, 2017 at 9 a.m.~~

~~CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.OConnor@ky.gov.~~

**CABINET FOR HEALTH AND FAMILY SERVICES  
Office of the Secretary  
Medical Review Panel Branch  
(As Amended at ARRS, October 10, 2017)**

**900 KAR 11:010. Medical Review Panels.**

RELATES TO: KRS 216C.010, 216C.030, 216C.040, 216C.050, 216C.060, 216C.070, 216C.080, 216C.090, 216C.100, 216C.110, 216C.120, 216C.160, 216C.170, 216C.180, 216C.200, 216C.210, 216C.220, 216C.230

STATUTORY AUTHORITY: KRS 194A.050(1), 216C.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS Chapter 216C establishes the framework and general requirements for medical review panels in Kentucky and KRS 216C.040(3) requires the cabinet to establish the filing fee that shall accompany each proposed complaint filed with a medical review panel. This administrative regulation establishes the requirements for medical review panels in accordance with KRS Chapter 216C.

Section 1. Definitions. (1) "Claimant" means a patient who is pursuing a malpractice or malpractice-related claim against a health care provider.

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(2) "Defendant" means the health care provider or providers against whom a complaint is filed.

(3) "Derivative claim" means a claim included in the description of a derivative claim within the KRS 216C.010(7) definition of "patient".

(4) "Health care provider" is defined by KRS 216C.010(4).

(5) "Licensing agency" means a licensure board that licenses health care providers.

(6) "Patient" is defined by KRS 216C.010(7).

(7) "Proposed complaint" or "complaint" means the documentation required by Section 4(1) of this administrative regulation.

Section 2. Application Process for Prospective Panel Chairperson. (1) To apply to serve as chairperson of a medical review panel, an attorney shall complete and submit to the Cabinet for Health and Family Services, Medical Review Panel Branch, Form MRP-001, Application to Serve as Chairperson of a Medical Review Panel.

(2) The name of each attorney who submits a Form MRP-001 shall remain on the list of attorneys required by KRS 216C.070(8) until the:

(a) Attorney notifies the cabinet that the application is withdrawn; or

(b) Cabinet receives notification that the attorney is no longer licensed to practice law in Kentucky.

Section 3. Identification of Prospective Panelists. (1) The cabinet shall request each licensing agency to provide a current list of all health care providers who:

(a) Are licensed by that agency;

(b) Are natural persons; and

(c) Hold a valid, active license to practice in his or her profession in Kentucky.

(2) The list provided by the licensing agency shall include each licensee's:

(a) Name;

(b) Mailing address;

(c) Business address;

(d) Type of license; and

(e) If applicable, known specialty fields.

Section 4. Proposed Complaints and Filing Fee. (1) A proposed complaint:

(a) May be filed on Form MRP-002; ~~and~~

(b) Shall include:

1. a. The name and current mailing address, phone number, and if known, email address of each named party; ~~and~~

b. For each named defendant, the name, current mailing address, phone number, and if known, email address of the person authorized to receive summons under the Kentucky Rules of Civil Procedure on behalf of that named defendant;

2. The name and current mailing address, phone number, and email address of the claimant's attorney, if retained;

3. Identification of the claimant, including:

a. If the claimant is the individual who received or should have received health care from a health care provider and the patient's date of birth; or

b. If the claimant is pursuing a derivative claim, a description of that derivative claim, including the name and birth date of the individual who received or should have received health care from a health care provider, and the reason that the claimant is pursuing the claim on that person's behalf;

4. A description of the malpractice and malpractice-related claims against each named health care provider, including:

a. The nature of the patient's injury;

b. The appropriate standard of care with which each defendant was expected to comply;

c. The actions each defendant took or failed to take that caused the defendant's failure to comply with the appropriate standard of care; and

d. How this failure caused or contributed to the claimant's injury;

5. The date of the alleged occurrence of malpractice; ~~and~~

6. The Kentucky Supreme Court district in which the case would be filed; and

7. The signature of the claimant or the claimant's counsel, if retained; and

(c) Shall not be filed against an unknown defendant. If a complaint is filed that names an unknown defendant, the cabinet shall return the complaint to the claimant or claimant's attorney to:

1. Completely remove the unknown defendant from the proposed complaint; or

2. Replace the unknown defendant with an identified defendant.

(2) Except as provided by Section 14 of this administrative regulation, each proposed complaint shall be accompanied by a filing fee as required by this subsection.

(a)1. Except as provided by subparagraph 2. of this paragraph, the amount of the filing fee shall include:

a. A base amount of \$125; and

b. An additional amount of twelve (12) dollars for each defendant to cover the costs of service of process.

2. If service of process is not completed because a valid address was not provided by the claimant in the complaint, as required by subsection (1)(b)1. of this section, the claimant shall pay an additional twelve (12) dollars for each subsequent attempt at service of process.

(b) A fee required by paragraph (a) of this subsection shall be:

1.[-:

(a) In the amount of \$125, plus twelve (12) dollars for each defendant;

~~(b)]~~ In the form of a check or money order; and

2. [(e)] Payable to the Kentucky State Treasurer.

(3) Medical records shall not be submitted with the complaint. Medical records received by the cabinet shall be returned or destroyed.

(4)(a) Except as provided by Section 14 of this administrative regulation, the proposed complaint and required filing fee shall be delivered or mailed by registered or certified mail to the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street, 5W-A(MRP), Frankfort, Kentucky 40621.

(b) Upon receipt of the proposed complaint and the required filing fee, the cabinet shall:

1. Issue Form MRP-003, Acknowledgement of Complaint Filing, to the claimant; and

2. Assign a case number in the format of "MRP-(four (4) digit calendar year)-(four (4) digit sequential number)".

(c) The cabinet shall:

1. Serve a copy of the proposed complaint on each defendant as required by KRS 216C.050, which requires service on a person authorized to receive summons under the Kentucky Rules of Civil Procedure; and

2. Include Form MRP-004, Cabinet Letter to Party re Filing of Proposed Complaint.

(5) Within ten (10) days after completion of service on each defendant, determined in accordance with KRS 216C.050, the cabinet shall email Form MRP-005, Cabinet Notification to the Parties Regarding Service of the Complaint and Panel Chairperson Selection, to all parties to notify them:

(a) Of the date service on all defendants was completed; and

(b) Regarding the panel chairperson selection process established by KRS 216C.070.

(6)(a) An inquiry about the medical review panel process may be submitted via e-mail to [mrp@ky.gov](mailto:mrp@ky.gov).

(b) A proposed complaint and the required filing fee shall not be submitted via e-mail.

Section 5. Representation by Counsel. (1) If the complaint is filed by counsel on behalf of a claimant, or if notification is received that the claimant has later become represented by counsel, all subsequent notices and information for the claimant shall be sent to the identified counsel unless notification is received that the

claimant has obtained different counsel or is no longer represented by counsel.

(2) If an appearance is made by counsel for a defendant, all subsequent notices and information for the defendant shall be sent to the identified counsel unless notification is received that the defendant has obtained different counsel or is no longer represented by counsel.

Section 6. Document Templates. (1)(a) The cabinet shall use the document templates listed in subsection (3) of this section for the documents' established purposes.

(b) The panel chairperson shall communicate the information required by KRS Chapter 216C by using either:

1. The document templates listed in subsection (4) of this section; or

2. A document developed by the panel chairperson that communicates the required information.

(c) Except for the items required by KRS 216C.040(2), 216C.050, 216C.110, and 216C.230 to be mailed, a required or recommended communication shall be mailed or emailed to the appropriate recipient.

(2) If the document template includes variable information that is complaint-specific or references information to be determined by the cabinet or chairperson, that information shall be completed as part of the document's preparation.

(3)(a) Form MRP-006, Cabinet Letter to Parties re Chairperson Striking Panel, shall be sent by the cabinet to notify the parties of the five (5) attorneys whose names were drawn pursuant to KRS 216C.070(2).

(b) Form MRP-007, Cabinet Letter to Party re Strike of Chairperson, shall be used by the cabinet to facilitate the selection of the chairperson pursuant to KRS 216C.070(3).

(c) Form MRP-008, Cabinet Letter to Party re Cabinet Strike of Chairperson, shall be used by the cabinet pursuant to KRS 216C.070(5)(b).

(d) Form MRP-009, Cabinet Letter to Chairperson re Selection to Serve, shall be used by the cabinet to:

~~4.]~~ send the notification required by KRS 216C.070(6) of the name of the chairperson to the chairperson and to each party.

(e) Form MRP-010, Cabinet Letter to Chairperson re List of Potential Panelists, shall be used by the cabinet to send the chairperson the list of potential panelists required by KRS 216C.080 and 216C.090(1), which is:

1. Based on the list obtained from the applicable licensing agency as required by Section 3(1) and (2) of this administrative regulation; and

2. To the extent reasonably possible, limited to the professions and specialty fields, if any, of one (1) or more of the defendants.

(f) Form MRP-011, Cabinet Letter to Parties re Acknowledgement by Chairperson, shall be used by the cabinet to notify each party that the chairperson has acknowledged the appointment to serve as chairperson.

(4)(a) Form MRP-012, Chairperson Letter to Parties re Panel Striking Lists, may be used by the panel chairperson to provide the lists required by KRS 216C.090(1) to the parties.

(b) Form MRP-013, Chairperson Letter to Party re Strike, may be used by the panel chairperson to remind a party of the need to strike to comply with KRS 216C.090(3).

(c) Form MRP-014, Chairperson Letter to Panel Members re Selection to Serve, may be used by the panel chairperson to explain to the first two (2) panel members the process established in KRS 216C.090(2) for selecting the third panel member and to provide an overview of their responsibilities as panel members.

(d) Form MRP-015, Chairperson Letter to Third Panel Member re Selection to Serve, may be used by the panel chairperson to notify the third panel member of that person's selection pursuant to KRS 216C.090(3) and to provide an overview of the person's responsibilities as a panel member.

(e) Form MRP-016, Authorization to Release Medical Records and Protected Health Care Information, may be used by the panel chairperson to request that a claimant authorize the release of medical records.

(f) Form MRP-017, Chairperson Letter to Parties re Formation

of Panel and Schedule of Submissions, may be used by the panel chairperson as authorized by Section ~~9[8]~~(4)(b) of this administrative regulation, to provide the notifications required by KRS 216C.110(1) and (2), and to outline the schedule for the submission of evidence in accordance with KRS 216C.160(6) and (7).

(g) Form MRP-018, Chairperson Letter to Panel re Evidence, may be used by the panel chairperson as authorized by Section ~~9[8]~~(6)(b) of this administrative regulation, to:

1. Identify and transmit to the panel members the evidence to be considered by the medical review panel in accordance with KRS 216C.160; and

2. Determine potential dates for the panel to convene to:

a. Discuss the evidence;

b. Reach a decision; and

c. Issue a report.

(h) Form MRP-019, Chairperson Letter to Parties re **[Convening] Panel Hearing**, may be used by the panel chairperson to notify the parties that the panel plans to convene a hearing **to question counsel or ask the parties to answer specific questions**, in accordance with KRS 216C.170(2)(e).

(i) Form MRP-020, Administrative Subpoena, may be used by the panel chairperson to issue an administrative subpoena as authorized by KRS 216C.160(4).

Section 7. Oath for Panel Members. (1) Before considering any evidence or deliberating with other panel members, each member of the medical review panel shall submit written evidence of taking an oath, which shall read as follows: "I swear or affirm under penalties of perjury that I will well and truly consider the evidence submitted by the parties; that I will render my opinion without bias, based upon the evidence submitted by the parties; and that I will not communicate with any party or representative of a party before rendering my opinion, except as authorized by law."

(2) Form MRP-021, Oath for Panel Members, shall be provided to each panelist by the chairperson either prior to submission of the evidence to the panel members or at the same time the panel members receive the evidence.

(3) The written oath shall be signed by each panelist, witnessed, and returned to the panel chairperson for inclusion in the official record of the panel.

Section 8. **Duties of Chairperson. In accordance with KRS 216C.060(3), the chairperson shall:**

**(1) Rule on motions tendered by the parties to:**

**(a) Expedite the panel's review of a proposed complaint; and**

**(b) Allow for the parties to make full and adequate presentation of related facts and authorities; and**

**(2) Use the Kentucky Rules of Civil Procedure as a reference, including for guidance on whether to add a third party for purposes of having all interested and relevant parties before the medical review panel.**

**Section 9.** Submission to the Panel and Other Parties. (1) Evidence submitted pursuant to KRS 216C.160(6) by a claimant shall be submitted to the panel chairperson and all other parties.

(2) Evidence submitted pursuant to KRS 216C.160(7) by a defendant shall be submitted to the panel chairperson and all other parties.

(3) Evidence shall not be submitted by a claimant or defendant directly to a panel member.

(4)(a) The panel chairperson shall send written notification to the parties to provide the:

1. Email addresses to use to submit evidence in electronic form, as authorized by KRS 216C.160(1); and

2. Mailing addresses to use to submit evidence in written form, as authorized by KRS 216C.160(1).

(b) The panel chairperson may use Form MRP-017, Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions, as a template for the written notification required by paragraph (a) of this subsection.

(5) If evidence is submitted in written form, the mailing to the

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panel chairperson shall include four (4) copies of each item.

(6) The chairperson:

- (a) Shall send all submitted evidence to each panel member, as required by KRS 216C.160(5); and
- (b) May use Form MRP-018, Chairperson Letter to Panel re Evidence, as a template for the written notification required by paragraph (a) of this subsection.

**Section 10[9]. Panel Decision.** (1) Each member of the medical review panel shall use Form MRP-022, Panel Member's Opinion, to issue that panel member's opinion as to each defendant, as required and limited by KRS 216C.180. One (1) copy of Form MRP-022 shall be completed by each panel member for each defendant. The completed forms shall be submitted to the panel chairperson.

(2)(a) In accordance with KRS 216C.180(3), if two (2) or more members of the panel agree on the conclusion, that conclusion shall be the opinion of the panel and the chairperson shall complete Form MRP-023, Chairperson's Report of Panel's Final Opinion.

(b) If there is not agreement by two (2) or more members as required by KRS 216C.180(3), the panel chairperson shall instruct the panel members to continue deliberations.

(3) The chairperson shall provide a copy of the completed Form MRP-023, the supporting Form MRP-022 submitted by each panel member, and the time and expense reports required by Section **11[40]** of this administrative regulation to:

- (a) Each party;
- (b) Each medical review panel member; and
- (c) The Cabinet for Health and Family Services, Medical Review Panel Branch.

**Section 11[40]. Payment for Panel Members and Chairperson.**

(1)(a) Except as provided in paragraph (b) of this subsection, each panel member shall submit to the chairperson of the medical review panel a completed Form MRP-024, Time and Expense Report for Panel Members, with Form MRP-022, Panel Member's Opinion.

(b) If a proposed complaint is settled or withdrawn prior to receipt of the medical review panel's report pursuant to KRS 216C.180 and 216C.230, each panel member shall submit to the chairperson of the medical review panel, within three (3) business days of notification of the settlement or withdrawal, a completed Form MRP-024, Time and Expense Report for Panel Members.

(c) The Form MRP-024 shall include the log of the panel member's time spent on that medical review panel and the panel member's reasonable travel expenses.

(d) The chairperson shall review each of the forms submitted by the panel members and shall sign the form to verify that the form has been reviewed and appears to be an accurate representation of the panel member's time and expense report.

(2)(a) The chairperson shall complete Form MRP-025, Time and Expense Report for Chairperson, and submit it with the panel's report as required by subsection (3) of this section.

(b) The Form MRP-025 shall include the log of the chairperson's time spent on that medical review panel and the chairperson's reasonable travel expenses.

(3)(a) Pursuant to KRS 216C.220(3), the chairperson shall submit the four (4) completed time and expense reports to the appropriate party or parties with:

1. Form MRP-023, Chairperson's Report of Panel's Final Opinion, as required by KRS 216C.180 and Section **10[9]** of this administrative regulation; or

2. Form MRP-026, Panel's Final Report Following Notification of Settlement or Complaint Withdrawal, if a report will not be issued because the complaint was settled or withdrawn prior to receipt of the medical review panel's report.

(b) The completed time and expense reports shall also be sent by the chairperson to the Cabinet for Health and Family Services, Medical Review Panel Branch.

(4) Except as provided by paragraph (b) of this subsection, payment shall be made as required by KRS 216C.220(4).

(b) If the parties agreed to settle or withdraw the proposed

complaint prior to receipt of the medical review panel's report pursuant to KRS 216C.180 and 216C.230:

1. Payment shall be made as agreed to by the parties and stated on Form MRP-027, Notification of Settlement or Withdrawal; or

2. If the Form MRP-027, Notification of Settlement or Withdrawal, does not address payment of the fees and expenses:

a. If there is one (1) claimant and one (1) defendant, the claimant and defendant shall each pay fifty (50) percent of the fees and expenses; and

b. If there are multiple claimants or defendants, the fees and expenses shall be split equally between the parties, with:

(i) The claimants collectively responsible for fifty (50) percent of the fees and expenses; and

(ii) The defendants collectively responsible for fifty (50) percent of the fees and expenses.

(5)(a) A party required to pay the fees and expenses shall submit payment by check or money order:

1. To the medical review panel's chairperson, who shall distribute the payments to each panel member; and

2. Within thirty (30) days of the date of the panel's report or the date of the settlement.

(b) If full payment is not received by the deadline established in paragraph (a)2. of this subsection, interest shall accrue:

1. From the date of the panel's report or the date of the settlement; and

2. At the current Kentucky post-judgment interest rate.

**Section 12[44]. Settlements or Withdrawals.** (1) Upon settlement or withdrawal of a matter pending before a medical review panel prior to receipt of the medical review panel's opinion pursuant to KRS 216C.180 and 216C.230, the claimant and defendant shall complete and file Form MRP-027, Notification of Settlement or Withdrawal, as required by subsection (2) or (3) of this section.

(2) If the settlement or withdrawal occurs before the chairperson is selected, the claimant and defendant shall file Form MRP-027 with the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street, 5W-A(MRP), Frankfort, Kentucky 40621.

(3)(a) If the settlement or withdrawal occurs after the chairperson is selected and before the opinion is issued by the medical review panel, the claimant and defendant shall file Form MRP-027 with the chairperson.

(b) The chairperson shall:

1. Notify the panel members that the complaint has been settled or withdrawn and shall request submission of Form MRP-024, Time and Expense Report for Panel Members, for payment as established in Section **11[40]**(4) of this administrative regulation; and

2. Forward a copy of the Form MRP-027, Notification of Settlement or Withdrawal, to the Cabinet for Health and Family Services, Medical Review Panel Branch.

(4) Settlement with, or withdrawal regarding, one (1) or more, but not all, claimants or defendants shall not conclude the medical review panel's obligation to review the remaining claims.

**Section 13[42]. Sample Form for Waiver of Medical Review Panel Process.** (1) To waive the medical review process, a claimant and all parties shall complete:

(a) Form MRP-028, Parties' Agreement to Waive the Medical Review Panel Process; or

(b) Written documentation, without use of Form MRP-028, that provides evidence of the agreement required by KRS 216C.030.

(2) A waiver of the medical review process may be filed pursuant to KRS 216C.030 without previously filing a proposed complaint and filing fee as required by Section 4(1) and (2) of this administrative regulation.

(3) A copy of the Form MRP-028 or the alternative written documentation shall be filed with the Cabinet for Health and Family Services, Medical Review Panel Branch.

**Section 14. Indigent Claimants. (1) If a claimant is unable to**

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pay the filing fee established by Section 4(2) of this administrative regulation and the twenty-five (25) dollar fee for selecting a panel chair established by KRS 216C.070(2), the claimant shall file Form MRP-029, Attestation of Indigency. The proposed complaint and the Form MRP-029, Attestation of Indigency, shall be delivered or mailed by registered or certified mail to the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street, 5W-A(MRP), Frankfort, Kentucky 40621.

(2) The cabinet secretary or designee shall consider the following factors in evaluating a request that is filed pursuant to subsection (1) of this section:

(a) Income;

(b) Source of income;

(c) Property owned;

(d) Number of motor vehicles owned and in working condition;

(e) Other assets;

(f) Outstanding obligations;

(g) The number and ages of the claimant's dependents; and

(h) The poverty level income guidelines compiled and published by the United States Department of Labor.

(3) The cabinet secretary or designee shall issue Form MRP-030, Accompanying Order, within two (2) business days either waiving the fees or denying the request.

(4) If the fees are waived:

(a) The filing date for the complaint shall be the date the order is issued;

(b) The required filing fee shall be zero dollars; and

(c) The cabinet shall proceed with the process established in Section 4(4)(b) of this administrative regulation.

(5) If the fees are not waived:

(a) The filing date for the complaint shall be the date the filing fee established by Section 4(2)(a) of this administrative regulation is received by the cabinet; and

(b) The cabinet shall proceed with the process established in Section 4(4)(b) of this administrative regulation once the fee is paid.

(6) Payment for the medical review panel chairperson and members, which is required by KRS 216C.220, shall not be waived.

Section 15[13]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form MRP-001, "Application to Serve as Chairperson of a Medical Review Panel", June 2017;

(b) Form MRP-002, "Proposed Complaint", **September[June]** 2017;

(c) Form MRP-003, "Acknowledgement of Complaint Filing", June 2017;

(d) Form MRP-004, "Cabinet Letter to Party re Filing of Proposed Complaint", June 2017;

(e) Form MRP-005, "Cabinet Notification to the Parties Regarding Service of the Complaint and Panel Chairperson Selection", June 2017;

(f) Form MRP-006, "Cabinet Letter to Parties re Chairperson Striking Panel", **September[June]** 2017;

(g) Form MRP-007, "Cabinet Letter to Party re Strike of Chairperson", June 2017;

(h) Form MRP-008, "Cabinet Letter to Party re Cabinet Strike of Chairperson", June 2017;

(i) Form MRP-009, "Cabinet Letter to Chairperson re Selection to Serve", June 2017;

(j) Form MRP-010, "Cabinet Letter to Chairperson re List of Potential Panelists", June 2017;

(k) Form MRP-011, "Cabinet Letter to Parties re Acknowledgement by Chairperson", June 2017;

(l) Form MRP-012, "Chairperson Letter to Parties re Panel Striking Lists", **September[June]** 2017;

(m) Form MRP-013, "Chairperson Letter to Party re Strike", **September[June]** 2017;

(n) Form MRP-014, "Chairperson Letter to Panel Members re

Selection to Serve", **September[June]** 2017;

(o) Form MRP-015, "Chairperson Letter to Third Panel Member re Selection to Serve", June 2017;

(p) Form MRP-016, "Authorization to Release Medical Records and Protected Health Care Information", **September[June]** 2017;

(q) Form MRP-017, "Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions", June 2017;

(r) Form MRP-018, "Chairperson Letter to Panel re Evidence", June 2017;

(s) Form MRP-019, "Chairperson Letter to Parties re **Convening** Panel **Hearing**", **September[June]** 2017;

(t) Form MRP-020, "Administrative Subpoena", June 2017;

(u) Form MRP-021, "Oath for Panel Members", June 2017;

(v) Form MRP-022, "Panel Member's Opinion", June 2017;

(w) Form MRP-023, "Chairperson's Report of Panel's Final Opinion", June 2017;

(x) Form MRP-024, "Time and Expense Report for Panel Members", June 2017;

(y) Form MRP-025, "Time and Expense Report for Chairperson", June 2017;

(z) Form MRP-026, "Panel's Final Report Following Notification of Settlement or Complaint Withdrawal", June 2017;

(aa) Form MRP-027, "Notification of Settlement or Withdrawal", June 2017; **and**

(bb) Form MRP-028, "Parties' Agreement to Waive the Medical Review Panel Process", June 2017;

**(cc) Form MRP-029, "Attestation of Indigency", September 2017; and**

**(dd) Form MRP-030, "Accompanying Order", September 2017.**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street, 5W-A(MRP), Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at <http://mrp.ky.gov>.

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 11, 2017

FILED WITH LRC: September 13, 2017 at 4 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov).

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET  
Kentucky Board of Pharmacy  
(Amended After Comments)

201 KAR 2:380. Board authorized protocols.

RELATES TO: KRS 315.010~~(25)~~~~(24)~~, 315.191(1)(a), (f)  
STATUTORY AUTHORITY: KRS 315.010~~(25)~~~~(24)~~,  
315.191(1)(a), (f)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS  
315.010(24) defines prescription drug order, which includes orders  
issued through protocols authorized by the board. KRS  
315.191(1)(a) authorizes the board to promulgate administrative  
regulations necessary to regulate and control all matters pertaining  
to pharmacists, pharmacist interns, pharmacy technicians, and  
pharmacies. KRS 315.191(1)(f) authorizes the board to promulgate  
administrative regulations that are necessary to control the  
dispensing of prescription drug orders. This administrative  
regulation establishes procedures for board authorized protocols  
by which pharmacists may initiate the dispensing of non-  
controlled medications or other professional services.

Section 1. Definition. (1) "Prescriber" means any individual  
authorized to prescribe a legend drug.

Section 2. Procedures. (1) Pharmacists may initiate the  
dispensing of noncontrolled medications, over-the-counter  
medications, or other professional services under the following  
conditions:(a) A prescriber-approved protocol that meets the  
minimum requirements as set forth by the board is in place, and is  
dated and signed by the prescriber and pharmacists authorized to  
initiate the dispensing of noncontrolled medications, over-the-  
counter medications, or other professional services;

(b) The protocol has been approved by the board; **[and]**

(c) The pharmacist documents the dispensing event in the  
pharmacy management system, including:

1. Documentation as required by 201 KAR 2:170 for  
dispensing of prescription medication; and

2. Documentation that the individual receiving the medication  
or other professional service was provided with education pursuant  
to this administrative regulation; **and**[-]

**(d) Upon the request of an individual receiving care under  
a protocol, a pharmacist shall request the individual's primary  
care provider's information, provided one exists, and shall  
provide notification to the primary care provider within thirty  
(30) days of care.**

Section 3. Minimum Requirements of Protocol. (1) Protocols  
shall contain the following elements:

(a) Criteria for identifying persons eligible to receive medication  
therapies or other professional services under the protocol, and  
referral to an appropriate prescriber if the patient is high-risk or  
treatment is contraindicated;

(b) A list of the medications, including name, dose, route,  
frequency of administration, and refills authorized to be dispensed  
under the protocol;

(c) Procedures for how the medications are to be initiated and  
monitored, including a care plan implemented in accordance with  
clinical guidelines;

(d) Education to be provided to the person receiving the  
dispensed medications;

(e) Procedures for documenting in the pharmacy management  
system all medications dispensed, including notification of the  
**prescriber[physician]** signing the protocol, if requested;

(f) Length of time protocol is in effect;

(g) Date and signature of prescriber approving the protocol;  
and

(h) Dates and signatures of pharmacists authorized to initiate  
dispensing of medications or other professional services under the  
protocol.

Section 4. Pharmacist Education and Training Required. A  
pharmacist who dispenses medication pursuant to a prescriber-  
approved protocol shall first receive education and training in the  
subject matter of the protocol from a provider accredited by the  
accreditation council for pharmacy education or by a comparable  
provider approved by the board.

SCOTT GREENWELL, R.PH., President

APPROVED BY AGENCY: September 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

CONTACT PERSON: Steve Hart, Executive Director, Kentucky  
Board of Pharmacy, State Office Building Annex, Suite 300, 125  
Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910;  
fax (502) 696-3806, email Steve.Hart@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Steve Hart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This  
administrative regulation establishes protocol procedures for  
pharmacists who dispense medication through protocols.

(b) The necessity of this administrative regulation: KRS  
315.010(25) defines a prescription drug order to include protocols  
authorized by the board. This administrative regulation establishes  
protocols that are authorized by the board.

(c) How this administrative regulation conforms to the content  
of the authorizing statutes: KRS 315.191(1)(a) authorizes the board  
to promulgate administrative regulations to regulate and control all  
matters pertaining to pharmacists and pharmacies. KRS  
315.191(1)(f) authorizes the board to promulgate administrative  
regulations pertaining to prescription drug orders. KRS  
315.010(25) defines a prescription drug order to include protocols  
authorized by the board. This administrative regulation establishes  
criteria for protocols to be authorized by the board.

(d) How this administrative regulation currently assists or will  
assist in the effective administration of the statutes: Prescribers,  
pharmacists, pharmacies, patients, and the public will be able to  
ascertain what is required for pharmacist dispensing of  
medications pursuant to protocols.

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

(a) How the amendments will change this existing  
administrative regulation: The amendments will specify that  
protocols do not apply to non-controlled substances; the term  
"prescriber" will be consistently applied throughout the  
administrative regulation; a pharmacist, upon patient request, shall  
notify the patient's primary care provider within 30 days of care;  
protocols will apply to over-the-counter medications; the reference  
to the definition for prescription drug order is corrected; and  
language will be added to the Necessity, Function, and Conformity  
clause so that it is clear board authorized protocols are not  
confused with immunization or naloxone protocols referenced  
elsewhere in KRS Chapter 315 and 201 KAR Chapter 2.

(b) The necessity of the amendment to this administrative  
regulation: These amendments are responsive to concerns raised  
during the public hearing and comment period; they should  
address reservations about the breadth of the board's protocol  
intentions, and foster a collaborative environment within the  
healthcare community.

(c) How the amendment conforms to the content of the  
authorizing statutes: The amendments tighten parameters for  
protocols between prescribers and pharmacists; protocols are  
included within the definition of prescription drug orders in KRS  
315.010(25). The statutory authority is broad, but this amendment  
tightens the parameters for protocols in an attempt to assuage  
some concerns raised by physicians.

(d) How the amendment will assist in the effective  
administration of the statutes: The amendments eliminate the

dispensing of non-controlled substances and permit a pharmacist to dispense over-the-counter medications pursuant to board approved protocols. A pharmacist shall notify the patient's primary care provider within 30 days of care, upon patient request – this should optimize continuity of care for patients. The amendments further clarify the limitations and responsibilities of a pharmacist in the prescriber-pharmacist protocol relationship.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately 1000 protocols will be established with this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacists who dispense medications pursuant to a protocol will not dispense non-controlled substances, and will notify the patient's primary care provider within 30 days of care, assuming notification is authorized by the patient.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the identities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacists will dispense medications and professional services pursuant to physician-approved protocols with the benefits of increased convenience and accessibility to medications and professional services for patients.

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

(a) Initially: No costs will be incurred.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from fees will be used for implementation of this administrative regulation. Enforcement of this regulation shall be accomplished through normal and customary inspections.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because the regulation is applicable to all pharmacists that enter into a protocol for the dispensing of medications and 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? The Kentucky Board of Pharmacy will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a) and (f) authorize the board to promulgate administrative regulations to regulate and control pharmacies, pharmacists, and prescription drug orders. KRS 315.010(24) defines prescription drug orders to include orders issued through protocols authorized by the board.

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

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

Kentucky Board of Pharmacy in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the Kentucky Board of Pharmacy in subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

**ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Waste Management  
(Amended After Comments)**

**401 KAR 39:080. Hazardous waste handlers[Recycling and universal waste fees].**

RELATES TO: KRS 224.10, 224.46, 224.99, 40 C.F.R. Parts 260 through 267, 270, 273, 279

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.50-545[-224.46-550]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-510 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with the manifest system. KRS 224.46-510(1) requires the cabinet to promulgate administrative regulations to establish requirements relating to generators of hazardous waste and establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) requires that the cabinet establish classes or categories of hazardous waste reflecting the relative degree of hazard. KRS 224.50-545 requires that used automotive and industrial oil shall be recycled or disposed of properly[KRS 224.10-100(20) states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management]. This administrative regulation establishes the standards for hazardous waste handlers[fee schedule for permits for recyclers of hazardous waste and petitions to include additional wastes under 401-KAR-Chapter 43].

Section 1. Generators of Hazardous Waste.[Applicability:] (1) Except as established in subsections (2) through (11) of this section and Section 5 of this administrative regulation, the requirements for standards applicable to generators of hazardous waste shall be as established in 40 C.F.R. Part 262, except 40 C.F.R. 262.10(k)[applies to all persons considered to be recyclers in accordance with the criteria contained in Section 4 of 401-KAR 35:010 and 401-KAR-Chapter 36].

(2) **Small quantity generators and large quantity generators shall register with the cabinet by completing and submitting:**

(a) EPA form 8700-12 as referenced in 40 C.F.R. Parts 260 through 267, 270, 273, and 279; and

(b) Registration of Hazardous Waste Activity Addendum, DWM 7037A.

(3) The registration established in subsection (2) of this section shall be submitted annually to the cabinet at least forty-five (45) days prior to the expiration date shown on the certificate of

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registration.

(4)(a) A generator who has not received an EPA identification number may obtain one by registering with the cabinet as established in subsection (2) of this section.

(b) Upon receiving the request and reviewing the information, the cabinet shall assign an EPA identification number to the generator.

(5)(a) Hazardous waste generation and on-site management of hazardous waste shall be consistent with the registration submitted pursuant to subsection (2) of this section.

(b) If any information submitted in accordance with subsection (2) of this section changes, the generator shall modify and resubmit the form that includes the changes to the cabinet no later than thirty (30) days following the change.

(6) A hazardous waste generator that no longer generates hazardous waste on site, closes its facility, or goes out of business, shall complete and submit to the cabinet the Request to be Removed from the Hazardous Waste Handler List, DWM 7086, within ninety (90) days after the last date of hazardous waste generation.

(7)(a) A hazardous waste generator may only treat on-site in tanks, containers, containment buildings, and on drip pads, if:

1. A generator complies with the hazardous waste accumulation provisions of this section;

2. The generator notifies the cabinet of the intent to treat hazardous waste as required by subsection (2) of this section; and

3. The cabinet issues written approval to the generator.

(b)1. The cabinet shall not approve any treatment process that is not demonstrated to provide adequate protection to human health, safety, or the environment in a manner consistent with the purpose of the waste management administrative regulations and KRS Chapter 224.

2. If the cabinet determines that the approved treatment is not protective of human health, safety, or the environment, the cabinet shall issue a written revocation of the approval and all treatment activities shall cease.

(8)(a) Generators, except for very small quantity generators, shall prepare a Hazardous Waste Annual Report for the cabinet annually by completing and submitting:

1. EPA form 8700-13 A/B as referenced in 40 C.F.R. 262.41(a), 264.75, 265.75, and 267.75; and

2. Hazardous Waste Annual Report Addendum, DWM 7072A.

(b) Each generator, except for very small quantity generators, shall submit a copy of the Hazardous Waste Annual Report established in paragraph (a) of this subsection as established in KRS 224.46-510(1)(h).

(9) A generator, except for very small quantity generators, shall not offer hazardous waste to a transporter or to a treatment, storage, or disposal facility that has not received an EPA identification number.

(10)(a) A large quantity generator or small quantity generator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste until the generator has:

1. Registered with the cabinet as established in subsection (2) of this section; and

2. Received an EPA identification number.

(b) A very small quantity generator shall not treat hazardous waste until the generator has registered with the cabinet as established in subsection (2) of this section.

(11) The requirement for the container marking wording to state "Federal Law Prohibits" referenced in 40 C.F.R. 262.32(b), shall be replaced with "Federal and State Law Prohibit".

**(12) In addition to the requirements in 40 C.F.R. 262.18, a very small quantity generator voluntarily requesting to obtain an EPA identification number, shall register with the cabinet in accordance with subsection (2) of this section** [This administrative regulation applies to all persons who petition the cabinet to include additional wastes as a universal waste under 401 KAR Chapter 43].

Section 2. Transporters of Hazardous Waste. [Schedule of Fees for Recycling.] (1) Except as established in subsections (2) and (3) of this section and Section 5 of this administrative

regulation, the requirements for standards applicable to transporters of hazardous waste shall be as established in 40 C.F.R. Part 263 [An annual fee shall be required in order to register as a recycler of hazardous wastes. The fee to register as a hazardous waste recycler is \$300. Generators who generate less than 100 kg of hazardous waste in a calendar month (that is, conditionally exempt small quantity generators) shall be exempt from the registration fee for recycling activities].

(2)(a) A transporter shall not transport hazardous wastes or used oil within the Commonwealth of Kentucky without having received an EPA identification number from the cabinet, any other RCRA authorized state, or from the Federal Environmental Protection Agency.

(b) To obtain an EPA identification number from the cabinet, a transporter shall:

1. For a transporter who is also a hazardous waste generator or used oil transporter, register with the cabinet as established in Section 1(2) and (3) of this administrative regulation; or

2. For a transporter that is not also a hazardous waste generator or used oil transporter, complete and submit the Registration of Hazardous Waste Transportation Activity, DWM 7053.

(3) In addition to 40 C.F.R. 263.30(c), an air, rail, highway, or water transporter that has any knowledge of a release or threatened release of a hazardous substance or pollutant or contaminant shall notify and report to the cabinet as established in Section 5(1) of this administrative regulation [No fee is charged if a registrant modifies his registration by making a name change. If a registrant submits a registration to modify any other information, a fee of fifty (50) dollars shall apply].

Section 3. Universal Waste. (1) Except as established in subsections (2) through (4) of this section and Section 5 of this administrative regulation, the requirements for standards for universal waste management shall be as established in 40 Part C.F.R. 273.

(2)(a) Prior to conducting on-site treatment of their own accumulated universal waste, a large or small quantity handler shall be subject to the requirements of Section 1 of this administrative regulation, including the requirement for on-site treatment by generators.

(b) Prior to conducting on-site treatment of accumulated universal waste received from off-site, a large or small quantity handler shall be subject to the requirements of 401 KAR 39:060 and 401 KAR 39:090.

(3) Breaking, disassembling, crushing, or otherwise damaging, intentionally or unintentionally, universal waste lamps shall render them a hazardous waste.

(4) A large quantity handler of universal waste shall register and report as established in Section 1 of this administrative regulation [Fees for Universal Waste Petitions. Any person seeking to add a hazardous waste or a category of hazardous waste to 401 KAR Chapter 43 shall submit a \$2,500 fee with the petition required in 401 KAR 43:070].

Section 4. Used Oil. (1) Except as established in subsections (2) through (9) of this section and Section 5 of this administrative regulation, the requirements for standards for the management of used oil shall be as established in 40 C.F.R. Part 279, except 40 C.F.R. 279.82.

(2) In addition to 40 C.F.R. 279.22 and 40 C.F.R. 279.52, KRS 224.1-400(11) and (12) and KRS 224.1-405 shall apply.

(3) An owner or operator of each used oil collection center shall:

(a) Register initially with the cabinet as established in Section 1(2) of this administrative regulation; and

(b) Complete and submit a Hazardous Waste Annual Report annually as established in Section 1(8) of this administrative regulation.

(4) A used oil processor, recycler, re-refiner, burner, or marketer that has not received an EPA identification number shall register with the cabinet as established in Section 1(2) of this administrative regulation.



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(5) In addition to 40 C.F.R. 279.54, upon detection of a release of used oil to the environment, not subject to the requirements established in 401 KAR 42:060, an owner or operator shall notify and report to the cabinet pursuant to Section 5(1) of this administrative regulation.

(6) In addition to 40 C.F.R. 279.43, 601 KAR 1:025 and Section 5(1) of this administrative regulation shall apply.

(7) Used oil shall not be used as a dust suppressant within the Commonwealth of Kentucky.

(8) In addition to 40 C.F.R. Part 280, 401 KAR Chapter 42 shall apply.

(9) The citations to Sections 307(b) and 402 of the Clean Water Act referenced in 40 C.F.R. Part 279 shall also include 401 KAR Chapter 5 [Submittal of Fees. The required fees shall be submitted to the cabinet with the permit application. All checks shall be made payable to the Kentucky State Treasurer].

Section 5. Exceptions and Additions. (1) In the event of a release or threatened release of a hazardous substance, pollutant or contaminant, or petroleum to the environment in a quantity that may present an imminent or substantial danger to human health or the environment as established in KRS 224.1-400, the facility authorized representative shall immediately notify the cabinet's twenty-four (24) hour emergency response line and provide a written report of the incident or accident within seven (7) days of the release, pursuant to KRS 224.1-400.

(2) In addition to Section 3008 of RCRA, KRS 224.10-420 through 224.10-470, 224.46-530, and 224.99-010 shall apply.

(3) In addition to Subtitle C of RCRA, KRS 224.46 shall apply.

(4)(a) As referenced in 401 KAR Chapter 39, the requirements in Section 3010 of RCRA shall be replaced with the requirement that any person generating or transporting a substance, or owning or operating a facility for treatment, storage, disposal, or recycling of the substance to register with the cabinet after promulgation of an administrative regulation identifying a substance by its characteristics or listing as hazardous waste subject to 401 KAR Chapter 39.

(b) The registration shall be filed as established in Section 1(2) of this administrative regulation and within ninety (90) days after promulgation or revision of the administrative regulation unless another registration date is established in the administrative regulations.

(5) In addition to 40 C.F.R. Part 257 and 40 C.F.R. Part 258, 401 KAR Chapters 45, 47, and 48 shall apply.

Section 6. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Hazardous Waste Annual Report Addendum", DWM 7072A, June 2017;

(b) "Registration of Hazardous Waste Activity Addendum", DWM 7037A, June 2017;

(c) "Registration of Hazardous Waste Transportation Activity", DWM 7053, June 2017; and

(d) "Request to be Removed from the Hazardous Waste Handler List", DWM 7086, June 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. until 4:30 p.m.

(3) This material may also be obtained on the division's Web site at [waste.ky.gov](http://waste.ky.gov).

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 a 11 a.m.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email [Louanna.Aldridge@ky.gov](mailto:Louanna.Aldridge@ky.gov)

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for hazardous waste handlers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the standards for hazardous waste handlers. As a part of the authorization process for delegated authority from the Environmental Protection Agency, this administrative regulation will adopt required federal regulation updates for management of hazardous waste.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Environmental and Public Protection Cabinet to promulgate administrative regulations for the generation, treatment, storage, transportation, recycling, and disposal of hazardous wastes. KRS 224.46-510 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with the manifest system. KRS 224.46-510(1) requires the cabinet to promulgate administrative regulations to establish requirements relating to generators of hazardous waste and establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) requires that the cabinet establish classes or categories of hazardous waste reflecting the relative degree of hazard. KRS 224.50-545 provides that used automotive and industrial oil shall be recycled or disposed of properly.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes standards for hazardous waste handlers, as required by KRS 224.10-100, 224.46-510, and 224.50-545, for the generation, treatment, storage, recycling, transportation, and disposal of hazardous waste.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by establishing the standards for hazardous waste handlers rather than only establishing recycling and universal waste fees as it was previously established to do. This is a part of consolidating and streamlining the number of regulations for the hazardous waste program. In addition, this amendment will adopt the new federal generator improvement rule. The generator improvement rule will allow a hazardous waste generator to avoid increased burden of a higher generator when generating episodic waste if the waste is managed properly, and allow very small quantity generators to send their hazardous waste to a large quantity generator under the control of the same person. In addition, this amendment after comments was made to remove the requirement for very small quantity generators to register. Registration for very small quantity generators will be on a voluntary basis.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the standards for hazardous waste handlers. As a part of the authorization process for delegated authority from the Environmental Protection Agency, this administrative regulation will adopt required federal regulation updates for hazardous waste. In addition, this amendment after comments was necessary to remove the requirement for very small quantity generators to register. Registration for very small quantity generators will be on a voluntary basis.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Environmental and Public Protection Cabinet to promulgate administrative regulations for the generation, treatment, storage, transportation, recycling, and disposal of hazardous wastes. KRS 224.46-510 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with the manifest system. KRS 224.46-510(1) requires the cabinet to promulgate administrative regulations to establish requirements

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relating to generators of hazardous waste and establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) requires that the cabinet establish classes or categories of hazardous waste reflecting the relative degree of hazard. KRS 224.50-545 provides that used automotive and industrial oil shall be recycled or disposed of properly.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes standards for hazardous waste handlers, as required by KRS 224.10-100, 224.46-510, and 224.50-545, for the generation, treatment, storage, recycling, transportation, and disposal of hazardous waste.

(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 facilities that generate, transport, treat, store, and dispose of hazardous waste. There are approximately 16 treatment, storage, and disposal facilities, 384 large quantity generators, 412 small quantity generators, 2,853 very small quantity generators, 131 large quantity universal waste handlers, 142 used oil facilities, and 132 transporters in the Commonwealth of 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: Each facility is required to make a hazardous waste determination. Based on the new federal definition of solid waste, some waste that has been determined as hazardous waste in the past may now be nonhazardous waste, requiring a new waste determination. Therefore, facilities that might have been small quantity generators may now be considered very small quantity generators. In addition, small quantity generators would be required to report annually.

(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 in cost for complying with this administrative regulation. There is a potential for a decrease in compliance costs if: (a) A previously considered hazardous waste is determined to be nonhazardous under the new federal definition of solid waste and exemptions; (b) A very small quantity generator or small quantity generator generated episodic hazardous waste and would not be required to modify into a more stringent regulatory category under the new federal generator improvement rule; and (c) A very small quantity generator would be allowed to consolidate hazardous waste with a large quantity generator under the control of the same person under the new federal generator improvement rule.

(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 in those cases where a hazardous waste is now determined to be nonhazardous or exempt under the new federal definition of solid waste, an owner or operator would have decreased costs for transport and disposal. In addition, a very small quantity generator and small quantity generator who generate episodic hazardous waste would not be required to modify into a more stringent regulatory category under the new federal generator improvement rule. Lastly, very small quantity generators would have the ability to consolidate hazardous waste with a large quantity generator under the control of the same person.

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

(a) Initially: \$2.9M annually, for this program, as a whole.

(b) On a continuing basis: \$2.9M annually, for this program, as a whole.

(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 restricted funds, general

funds 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 who generate, transport, store, or dispose of hazardous waste. To apply tiering to the regulation would unduly regulate some entities while not regulating others.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 generate, transport, store, or dispose of hazardous waste, 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. Parts 262, 263, 273, and 279 and KRS 224.10 and 224.46.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 hazardous waste 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 revenue for state or local government as the hazardous waste program is already in effect. Currently the division receives \$1.5M in federal grant funding to administer this program, as a whole.

(b) How 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 hazardous waste program is already in effect. Currently the division receives \$1.5M in federal grant funding to administer this program, as a whole.

(c) How much will it cost to administer this program for the first year? \$2.9M, as a whole.

(d) How much will it cost to administer this program for subsequent years? \$2.9M, as a whole.

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

Revenues (+/-): \$1.5M in federal grant funding, as a whole.

Expenditures (+/-): \$2.9M, as a whole.

Other Explanation:

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. Parts 262, 263, 273, and 279.

2. State compliance standards. KRS 224.10-100, 224.46-510, 224.50-545.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Parts 262, 263, 273, and 279.

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. Section 1 requires small and large generators, including treatment on-site to register with the cabinet annually rather than biennially or every four years for small quantity generators, and to include anticipated types, potential sources, general characteristics, and weights or volumes of hazardous wastes on an addendum. It creates a voluntary registration for very small quantity generators who request an EPA identification number. In addition, it establishes procedures for generators to obtain an EPA identification number from the cabinet, establishes procedures for hazardous waste generators to be removed from the handler list, requires an annual report on hazardous waste instead of biennial reporting, and requires the annual report to be sent to local county governments. Section 2 establishes procedures for transporters to obtain an EPA identification number and register with the cabinet. Section 3 exempts on-site treatment of accumulated universal waste from being considered a universal waste and establishes requirements for on-site treatment as a hazardous waste. In addition, Section 3 establishes universal waste lamps as a hazardous waste if broken. Section 4 requires used oil collection centers to register with the cabinet, establishes procedures for registration and obtaining an EPA identification number, and prohibits used oil from being used as a dust suppressant. Section 5 requires cabinet notification for releases, establishes hearing procedures and penalties to be implemented by the cabinet, and replaces the federal requirement with a state requirement to register once a hazardous waste is listed.

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, except for universal waste lamps. Breakage or damage to universal waste lamps, requires a hazardous waste determination and based on the composition of the lamps no longer allows them to be considered a universal waste.

**ENERGY AND ENVIRONMENT CABINET**  
**Department for Environmental Protection**  
**Division of Waste Management**  
**(Amended After Comments)**

**401 KAR 39:090. Hazardous waste permit program[Postclosure fees].**

RELATES TO: KRS 224.10, 224.46, 224.99, 40 C.F.R. 264.265, 266, 267

STATUTORY AUTHORITY: KRS 224.46-520[224.10-100, 224.46-550]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-520 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards for hazardous waste permitting and persons engaging in the storage, treatment, disposal, and recycling of hazardous waste, and to establish standards for these permits, to require adequate financial responsibility, to establish corrective action requirements, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities[KRS 224.10-100(20) states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions]. KRS 224.50-130 requires the Energy and Environment Cabinet to list additional compounds as hazardous wastes and to consider additional criteria in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage or disposal of nerve agents[KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management]. This administrative regulation establishes the standards for the hazardous waste permit program[fee schedule for permits for the postclosure care period for land disposal hazardous waste sites or facilities].

Section 1. Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. Except as established in subsections (1) through (7) of this section and Sections 5 through 9 of this administrative regulation, standards for owners and operators of hazardous waste treatment, storage, and disposal facilities shall be as established in 40 C.F.R. Part 264, except 40 C.F.R. 264.1(f), 40 C.F.R. 264.1(g)(12), 40 C.F.R. 264.15(b)(5), 40 C.F.R. 264.149, 40 C.F.R. 264.150, 40 C.F.R. 264.301(l), 40 C.F.R. 264.1030(d), 40 C.F.R. 264.1050(g), and 40 C.F.R. 264.1080(e) to (g)[Applicability].

(1) The Maximum Concentration of Constituents for Groundwater Protection in 40 C.F.R. 264.94, Table 1 shall be replaced with Table 1 of this subsection.

Table 1: Maximum Concentration of Constituents for Groundwater Protection	
Maximum Contaminant Constituent	Level (mg/l)
Antimony	0.006
Arsenic	0.01
Barium	2.0
Benzene	0.005
Benzo(a)pyrene	0.0002
Beryllium	0.004
Cadmium	0.005
Carbon tetrachloride	0.005
Chlordane	0.002
Chromium	0.1
Cyanide (as free Cyanide)	0.2
Dibromochloropropane	0.0002
1,2-Dichloroethane	0.005
o-Dichlorobenzene	0.6
p-Dichlorobenzene	0.075
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
Dichloromethane (Methylene chloride)	0.005
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.07
1,2-Dichloropropane	0.005
Di(2-ethylhexyl)phthalate	0.006
Dinoseb	0.007
Endothall	0.1
Endrin	0.002
Ethylene dibromide (1,2-Dibromoethane)	0.00005
Fluoride	4.0
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Lead	0.15
Lindane	0.0002
Mercury	0.002
Methoxychlor	0.04
Monochlorobenzene	0.1
Polychlorinated biphenyls	0.0005
Pentachlorophenol	0.001
Selenium	0.05
Tetrachloroethylene	0.005
Thallium	0.002
Toluene	1
Toxaphene	0.003
1,1,1-Trichloroethane	0.2
Trichloroethylene	0.005
1,2,4-Trichlorobenzene	0.07
1,1,2-Trichloroethane	0.005
2,4,5-TP Silvex	0.01
2,3,7,8-TCDD (Dioxin)	3.0 x 10 <sup>-8</sup>
Vinyl chloride	0.002

[This administrative regulation applies to all owners and operators of hazardous waste sites or facilities in Kentucky who submit an application for a postclosure permit as specified in Section 1(2) of

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401 KAR 38:010. This fee does not apply to owners and operators of hazardous waste sites or facilities that submit a postclosure plan as part of an application for an operation permit for a landfill required in Section 4 of 401 KAR 38:010 and pay the fees required by 401 KAR 39:120.]

(2) In addition to 40 C.F.R. 264.143(e)(1), 40 C.F.R. 264.145(e)(1), 40 C.F.R. 264.147(a)(1)(ii), and 40 C.F.R. 264.147(b)(1)(ii), each insurance policy providing primary coverage shall be issued by an insurer that is authorized to transact insurance in Kentucky, except as KRS 304.11-030 provides otherwise.

(3) The reference in 40 C.F.R. 264.570 and 265.440(a) to "December 6, 1990", shall be replaced with "August 18, 1994", for drip pads where F034 or F035 wastes are handled.

(4) The reference in 40 C.F.R. 264.570 to "December 24, 1992", shall be replaced with "August 26, 1996", for drip pads where F034 or F035 wastes are handled.

(5) A tank system that stores or treats materials that become hazardous waste subsequent to March 10, 1988, shall conduct an assessment of any existing tank system's integrity within twelve (12) months after the date the waste becomes a hazardous waste.

(6) In addition to the requirements in 40 C.F.R. 264.304, if the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall notify the cabinet pursuant to 401 KAR 39:060, Section 6(1).

(7) In addition to the requirements in 40 C.F.R. 264.226, 264.254, and 264.303, applicants shall demonstrate that the admixed liner is structurally sound and chemically resistant to the waste placed in it to ensure that the liner is capable of supporting the waste without cracking, disintegrating, or allowing waste or leachate to escape [The provisions of this administrative regulation shall apply to post closure permit applications submitted on or after the effective date of this administrative regulation, and to such applications which are not complete, as determined by the cabinet, by the effective date of this administrative regulation. Postclosure permit applications which are complete, as determined by the cabinet, by the effective date of this administrative regulation, shall be subject to this administrative regulation as in effect on October 26, 1988].

Section 2. Owners and Operators of Interim Status Hazardous Waste Treatment, Storage, and Disposal Facilities. (1) Except as established in subsections (2) through (4) of this section and Sections 5 through 9 of this administrative regulation, interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities shall be as established in 40 C.F.R. Part 265, except 40 C.F.R. 265.1(c)(4), 40 C.F.R. 265.1(c)(15), 40 C.F.R. 265.149, 40 C.F.R. 265.150, 40 C.F.R. 265.1030(c), 40 C.F.R. 265.1050(f), and 40 C.F.R. 265.1080(e) to (g) [Filing Fees].

(2) In addition to the requirements in 40 C.F.R. 265.303, if the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall notify the cabinet pursuant to 401 KAR 39:060. Section 6(1) [Any owner or operator who submits an application for a postclosure permit or permit renewal for a hazardous waste site or facility shall submit with the application a nonrefundable filing fee in the amount of \$4,000].

(3) In addition to 40 C.F.R. 265.143(d)(1), 40 C.F.R. 265.145(d)(1), 40 C.F.R. 265.147(a)(1)(ii), and 40 C.F.R. 265.147(b)(1)(ii), each insurance policy providing primary coverage shall be issued by an insurer who is authorized to transact insurance in Kentucky, except as KRS 304.11-030 provides otherwise.

(4) As of January 12, 1991, a facility that failed to qualify for federal interim status for any waste code promulgated pursuant to HSWA or that lost interim status for failing to certify as required by HSWA for any newly promulgated waste code, shall also be denied interim status pursuant to this administrative regulation.

Section 3. Specific Hazardous Wastes and Facilities. Except as established in subsections (1) through (3) of this section and Sections 5 through 9 of this administrative regulation, standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities shall be as established in 40 C.F.R. Part 266 [Review Fee].

(1) The Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Noncomplex Terrain in 40 C.F.R. Part 266, Appendix I, Table I-D shall be replaced with Table I-D in this subsection.

Table I-D: Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Noncomplex Terrain

Terrain adjusted eff. stack ht. (m)	Values for use in urban areas				Values for use in rural areas			
	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)
4	4.6E-02	1.1E-01	1.7E-02	8.2E-02	2.4E-02	5.8E-02	8.6E-03	4.3E-02
6	5.4E-02	1.3E-01	1.9E-02	9.4E-02	2.8E-02	6.6E-02	1.0E-02	5.0E-02
8	6.0E-02	1.4E-01	2.2E-02	1.1E-01	3.2E-02	7.6E-02	1.1E-02	5.6E-02
10	6.8E-02	1.6E-01	2.4E-02	1.2E-01	3.6E-02	8.6E-02	1.3E-02	6.4E-02
12	7.6E-02	1.8E-01	2.7E-02	1.4E-01	4.3E-02	1.1E-01	1.6E-02	7.8E-02
14	8.6E-02	2.1E-01	3.1E-02	1.5E-01	5.4E-02	1.3E-01	2.0E-02	9.6E-02
16	9.6E-02	2.3E-01	3.5E-02	1.7E-01	6.8E-02	1.6E-01	2.4E-02	1.2E-01
18	1.1E-01	2.6E-01	4.0E-02	2.0E-01	8.2E-02	2.0E-01	3.0E-02	1.5E-01
20	1.2E-01	3.0E-01	4.4E-02	2.2E-01	1.0E-01	2.5E-01	3.7E-02	1.9E-01
22	1.4E-01	3.4E-01	5.0E-02	2.5E-01	1.3E-01	3.2E-01	4.8E-02	2.4E-01
24	1.6E-01	3.9E-01	5.8E-02	2.8E-01	1.7E-01	4.0E-01	6.0E-02	3.0E-01
26	1.8E-01	4.3E-01	6.4E-02	3.2E-01	2.1E-01	5.0E-01	7.6E-02	3.9E-01
28	2.0E-01	4.8E-01	7.2E-02	3.6E-01	2.7E-01	6.4E-01	9.8E-02	5.0E-01
30	2.3E-01	5.4E-01	8.2E-02	4.0E-01	3.5E-01	8.2E-01	1.2E-01	6.2E-01
35	3.0E-01	6.8E-01	1.0E-01	5.4E-01	5.4E-01	1.3E+00	1.9E-01	9.6E-01
40	3.6E-01	9.0E-01	1.3E-01	6.8E-01	8.2E-01	2.0E+00	3.0E-01	1.5E+00
45	4.6E-01	1.1E+00	1.7E-01	8.6E-01	1.1E+00	2.8E+00	4.2E-01	2.1E+00
50	6.0E-01	1.4E+00	2.2E-01	1.1E+00	1.5E+00	3.7E+00	5.4E-01	2.8E+00
55	7.6E-01	1.8E+00	2.7E-01	1.4E+00	2.0E+00	5.0E+00	7.2E-01	3.6E+00
60	9.4E-01	2.2E+00	3.4E-01	1.7E+00	2.7E+00	6.4E+00	9.6E-01	4.8E+00
65	1.1E+00	2.8E+00	4.2E-01	2.1E+00	3.6E+00	8.6E+00	1.3E+00	6.4E+00
70	1.3E+00	3.1E+00	4.6E-01	2.4E+00	4.3E+00	1.0E+01	1.5E+00	7.6E+00
75	1.5E+00	3.6E+00	5.4E-01	2.7E+00	5.0E+00	1.2E+01	1.8E+00	9.0E+00
80	1.7E+00	4.0E+00	6.0E-01	3.0E+00	6.0E+00	1.4E+01	2.2E+00	1.1E+01
85	1.9E+00	4.6E+00	6.8E-01	3.4E+00	7.2E+00	1.7E+01	2.6E+00	1.3E+01
90	2.2E+00	5.0E+00	7.8E-01	3.9E+00	8.6E+00	2.0E+01	3.0E+00	1.5E+01

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95	2.5E+00	5.8E+00	9.0E-01	4.4E+00	1.0E+01	2.4E+01	3.6E+00	1.8E+01
100	2.8E+00	6.8E+00	1.0E+00	5.0E+00	1.2E+01	2.9E+01	4.3E+00	2.2E+01
105	3.2E+00	7.6E+00	1.1E+00	5.6E+00	1.4E+01	3.4E+01	5.0E+00	2.6E+01
110	3.6E+00	8.6E+00	1.3E+00	6.4E+00	1.7E+01	4.0E+01	6.0E+00	3.0E+01
115	4.0E+00	9.6E+00	1.5E+00	7.2E+00	2.0E+01	4.8E+01	7.2E+00	3.6E+01
120	4.6E+00	1.1E+01	1.7E+00	8.2E+00	2.4E+01	5.8E+01	8.6E+00	4.3E+01

(2) The Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Complex Terrain, Values for use in Urban and Rural Areas in 40 C.F.R. Part 266, Appendix I, Table I-E shall be replaced with Table I-E in this subsection.

Table I-E: Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Complex Terrain, Values for use in Urban and Rural Areas

Terrain adjusted eff. stack ht. (m)	Values for use in urban and rural areas			
	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)
4	1.1E-02	2.6E-02	4.0E-03	2.0E-02
6	1.6E-02	3.9E-02	5.8E-03	2.9E-02
8	2.4E-02	5.8E-02	8.6E-03	4.3E-02
10	3.5E-02	8.2E-02	1.3E-02	6.2E-02
12	4.3E-02	1.0E-01	1.5E-02	7.6E-02
14	5.0E-02	1.3E-01	1.9E-02	9.4E-02
16	6.0E-02	1.4E-01	2.2E-02	1.1E-01
18	6.8E-02	1.6E-01	2.4E-02	1.2E-01
20	7.6E-02	1.8E-01	2.7E-02	1.3E-01
22	8.2E-02	1.9E-01	3.0E-02	1.5E-01
24	9.0E-02	2.1E-01	3.3E-02	1.6E-01
26	1.0E-01	2.4E-01	3.6E-02	1.8E-01
28	1.1E-01	2.7E-01	4.0E-02	2.0E-01
30	1.2E-01	3.0E-01	4.4E-02	2.2E-01
35	1.5E-01	3.7E-01	5.4E-02	2.7E-01
40	1.9E-01	4.6E-01	6.8E-02	3.4E-01
45	2.4E-01	5.4E-01	8.4E-02	4.2E-01
50	2.9E-01	6.8E-01	1.0E-01	5.0E-01
55	3.5E-01	8.4E-01	1.3E-01	6.4E-01
60	4.3E-01	1.0E+00	1.5E-01	7.8E-01
65	5.4E-01	1.3E+00	1.9E-01	9.6E-01
70	6.0E-01	1.4E+00	2.2E-01	1.1E+00
75	6.8E-01	1.6E+00	2.4E-01	1.2E+00
80	7.6E-01	1.8E+00	2.7E-01	1.3E+00
85	8.2E-01	2.0E+00	3.0E-01	1.5E+00
90	9.4E-01	2.3E+00	3.4E-01	1.7E+00
95	1.0E+00	2.5E+00	4.0E-01	1.9E+00
100	1.2E+00	2.8E+00	4.3E-01	2.1E+00
105	1.3E+00	3.2E+00	4.8E-01	2.4E+00
110	1.5E+00	3.5E+00	5.4E-01	2.7E+00
115	1.7E+00	4.0E+00	6.0E-01	3.0E+00
120	1.9E+00	4.4E+00	6.4E-01	3.3E+00

(3) The Risk Specific Doses (10<sup>-5</sup>) in 40 C.F.R. Part 266, Appendix V shall be replaced with Appendix V in this subsection.

Appendix V: Risk specific doses (10 <sup>-6</sup> )			
Constituent	CAS No.	Unit risk (m3/ug)	RsD (ug/m3)
Acrylamide	79-06-1	1.3E-03	7.7E-04
Acrylonitrile	107-13-1	6.8E-05	1.5E-02
Aldrin	309-00-2	4.9E-03	2.0E-04
Aniline	62-53-3	7.4E-06	1.4E-01
Arsenic	7440-38-2	4.3E-03	2.3E-04
Benz(a)anthracene	56-55-3	8.9E-04	1.1E-03
Benzene	71-43-2	8.3E-06	1.2E-01
Benzidine	92-87-5	6.7E-02	1.5E-05
Benzo(a)pyrene	50-32-8	3.3E-03	3.0E-04
Beryllium	7440-41-7	2.4E-03	4.2E-04

Bis(2-chloroethyl)ether	111-44-4	3.3E-04	3.0E-03
Bis(chloromethyl)ether	542-88-1	6.2E-02	1.6E-05
Bis(2-ethylhexyl)-phthalate	117-81-7	2.4E-07	4.2E+00
1,3-Butadiene	106-99-0	2.8E-04	3.6E-03
Cadmium	7440-43-9	1.8E-03	5.6E-04
Carbon Tetrachloride	56-23-5	1.5E-05	6.7E-02
Chlordane	57-74-9	3.7E-04	2.7E-03
Chloroform	67-66-3	2.3E-05	4.3E-02
Chloromethane	74-87-3	3.6E-06	2.8E-01
Chromium VI	7440-47-3	1.2E-02	8.3E-05
DDT	50-29-3	9.7E-05	1.0E-02
Dibenz(a,h)anthracene	53-70-3	1.4E-02	7.1E-05
1,2-Dibromo-3-chloropropane	96-12-8	6.3E-03	1.6E-04
1,2-Dibromoethane	106-93-4	2.2E-04	4.5E-03
1,1-Dichloroethane	75-34-3	2.6E-05	3.8E-02
1,2-Dichloroethane	107-06-2	2.6E-05	3.8E-02
1,1-Dichloroethylene	75-35-4	5.0E-05	2.0E-02
1,3-Dichloropropene	542-75-6	3.5E-01	2.9E-06
Dieldrin	60-57-1	4.6E-03	2.2E-04
Diethylstilbestrol	56-53-1	1.4E-01	7.1E-06
Dimethylnitrosamine	62-75-9	1.4E-02	7.1E-05
2,4-Dinitrotoluene	121-14-2	8.8E-05	1.1E-02
1,2-Diphenylhydrazine	122-66-7	2.2E-04	4.5E-03
1,4-Dioxane	123-91-1	1.4E-06	7.1E-01
Epichlorohydrin	106-89-8	1.2E-06	8.3E-01
Ethylene Oxide	75-21-8	1.0E-04	1.0E-02
Ethylene Dibromide	106-93-4	2.2E-04	4.5E-03
Formaldehyde	50-00-0	1.3E-05	7.7E-02
Heptachlor	76-44-8	1.3E-03	7.7E-04
Heptachlor Epoxide	1024-57-3	2.6E-03	3.8E-04
Hexachlorobenzene	118-74-1	4.9E-04	2.0E-03
Hexachlorobutadiene	87-68-3	2.0E-05	5.0E-02
Alpha-hexachlorocyclo-hexane	319-84-6	1.8E-03	5.6E-04
Beta-hexachlorocyclo-hexane	319-85-7	5.3E-04	1.9E-03
Gamma-hexachlorocyclohexane	58-89-9	3.8E-04	2.6E-03
Hexachlorocyclohex-ane, Technical	-	5.1E-04	2.0E-03
Hexachlorodibenzo-p-dioxin(1,2 Mixture)	-	1.3E+0	7.7E-07
Hexachloroethane	67-72-1	4.0E-06	2.5E+01
Hydrazine	302-01-2	2.9E-03	3.4E-04
Hydrazine Sulfate	302-01-2	2.9E-03	3.4E-04

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3-Methylcholanthrene	56-49-5	2.7E-03	3.7E-04
Methyl Hydrazine	60-34-4	3.1E-04	3.2E-03
Methylene Chloride	75-09-2	4.1E-06	2.4E-01
4,4'-Methylene-bis-2-chloroaniline	101-14-4	4.7E-05	2.1E-02
Nickel	7440-02-0	2.4E-04	4.2E-03
Nickel Refinery Dust	7440-02-0	2.4E-04	4.2E-03
Nickel Subsulfide	12035-72-2	4.8E-04	2.1E-03
2-Nitropropane	79-46-9	2.7E-02	3.7E-05
N-Nitroso-n-butylamine	924-16-3	1.6E-03	6.3E-04
N-Nitroso-n-methylurea	684-93-5	8.6E-02	1.2E-05
N-Nitrosodiethylamine	55-18-5	4.3E-02	2.3E-05
N-Nitrosopyrrolidine	930-55-2	6.1E-04	1.6E-03
Pentachloronitroben-zene	82-68-8	7.3E-05	1.4E-02
PCBs	1336-36-3	1.2E-03	8.3E-04
Pronamide	23950-58-5	4.6E-06	2.2E-01
Reserpine	50-55-5	3.0E-03	3.3E-04
2,3,7,8-Tetrachlorodi-benzo-p-dioxin	1746-01-6	4.5E+01	2.2E-08
1,1,2,2-Tetrachloro-ethane	79-34-5	5.8E-05	1.7E-02
Tetrachloroethylene	127-18-4	4.8E-07	2.1E+00
Thiourea	62-56-6	5.5E-04	1.8E-03
1,1,2-Trichloroethane	79-00-5	1.6E-05	6.3E-02
Trichloroethylene	79-01-6	1.3E-06	7.7E-01
2,4,6-Trichlorophenol	88-06-2	5.7E-06	1.8E-01
Toxaphene	8001-35-2	3.2E-04	3.1E-03
Vinyl Chloride	75-01-4	7.1E-06	1.4E-01

[Any owner or operator who submits an application for a postclosure permit or permit renewal for a hazardous waste site or facility shall submit with the application a nonrefundable review fee. Any owner or operator who has submitted an application but has not received a permit shall be subject to these fees. The review fee shall be \$9,000.]

Section 4. Standardized Permits. Except as established in Sections 5 through 9 of this administrative regulation, the standards for owners and operators of hazardous waste facilities operating under a standardized permit shall be as established in 40 C.F.R. 267, except 40 C.F.R. 267.150[Submittal of Fees. (1) The fees shall be submitted to the cabinet with the permit application.

(2) All checks or money orders shall be made payable to the Kentucky State Treasurer].

Section 5. Flood Plains. (1)(a) Except as established in paragraph (c)2. of this subsection, a facility located in a 100-year flood plain shall be designed, constructed, operated, maintained, and refitted if necessary, to prevent washout of any hazardous waste and to protect the facility from inundation by waters of the 100-year flood plain throughout the:

1. Active life of the facility;
2. Closure phase of the facility; and
3. For disposal facilities only, the post-closure phase.

(b) Prevention of washout and protection from inundation shall be accomplished by:

1. Using a structure or device designed to:
  - a. Provide adequate freeboard to prevent overtopping of the structure during a 100-year flood due to wind and wave action;
  - b. Provide sufficient structural integrity to prevent massive failure due to the force and erosive tendencies of the 100-year floodwaters; and
- c. Accommodate other characteristics of the facility's location as necessary to accomplish the requirements of this subsection;

2. Providing procedures that shall cause the waste to be removed safely, before floodwaters can reach the facility, to a location where the wastes will not be vulnerable to floodwaters; or

3. Demonstrating that alternate devices or measures, with the exception of covering the waste, shall provide protection that meets the requirements of this paragraph.

(c) The cabinet shall not issue a permit to construct a new hazardous waste:

1. Site or facility in the floodway; or
2. Disposal site or facility in the 100-year flood plain or a seasonal high-water table.

(d) A hazardous waste site or facility shall not restrict the flow of the 100-year flood or reduce the temporary water storage capacity of the 100-year flood plain so as to pose a hazard to human life, wildlife, or land or water resources.

(e) A facility that has closed and removed all hazardous waste, waste constituents, contaminated soil, debris, or other material contaminated with hazardous constituents, shall not be required to protect the closed portion of the facility from washout of waste or inundation by waters of the 100-year flood.

Section 6. Chemical Demilitarization. (1) In addition to the requirements in 40 C.F.R. Part 264, the cabinet shall consider the criteria established in subsection (2) of this section in making a determination to issue, deny, or condition a permit for any person applying for a permit to construct or operate a hazardous waste site or facility for treatment, storage, or disposal of any of the hazardous wastes listed in 401 KAR 39:060, Section 3(4).

(2) The permit applicant shall affirmatively demonstrate and the cabinet shall determine prior to issuance, conditional issuance, or denial of the permit that:

(a)1. The proposed treatment or destruction technology has been proven in an operational facility of scale, configuration, and throughput comparable to the proposed facility, for a period of time sufficient to provide assurance of 99.9999 percent destruction and removal efficiency of each substance proposed to be treated or destroyed as established in KRS 224.50-130(3)(a).

2. Destruction and removal efficiency (DRE) shall be determined for each waste from the following equation:

$$DRE \% = (Win - Wout) / Win \times 100\% \quad [Win]$$

Where:

$W_{in}$  = Mass feed rate of waste into the process.

$W_{out}$  = Mass emission rate of the same waste out of the process.

(b)1. Monitoring data from a comparable facility shall reflect the absence of emissions from stack or fugitive sources, including the products of combustion and incomplete combustion, which alone or in combination present an adverse effect on human health or the environment in accordance with KRS 224.50-130(3)(b).

2. The cabinet shall determine from the monitoring data the absence of risk to human health and the environment prior to permit issuance.

(c) A plan has been developed and funded providing for sufficient training, coordination, and equipment for state and local emergency response consistent with the requirements set forth in KRS 224.50-130(c).

(d) All workers within 1000 meters of the treatment unit are provided with an adequate level of protection against exposure to the nerve agents.

(3) In addition to the performance standards established in Section 1 of this administrative regulation, a facility treating the nerve and blister agents with hazardous waste codes N001, N002, or N003 established in 401 KAR 39:060, Section 3(4) shall be designed, constructed, and maintained to achieve a 99.9999 percent destruction and removal efficiency of each substance treated or destroyed.

(4)(a) An owner or operator who stores munitions or explosive hazardous wastes that contain the substances specified in 401 KAR 39:060, Section 3(4), shall be subject to the requirements of 40 C.F.R. 264, Subpart EE.

(b) As referenced in 40 C.F.R. 266.202(a), military munitions shall not include any material containing the substances established in 401 KAR 39:060, Section 3(4).

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(c) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste in 401 KAR 39:060, Section 3(4), shall be subject to the applicable regulatory requirements of 401 KAR Chapter 39, including the storage prohibitions referenced in 40 C.F.R. 268.50 as established in 401 KAR 39:060, Section 4.

Section 7. Financial Assurance. (1)(a) An owner or operator may satisfy the financial assurance requirements of this administrative regulation by submitting to the cabinet by certified mail, a bond guaranteeing compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(b) The bond shall be supported by a cash account or certificate of deposit.

(c) The cash account or the certificate of deposit shall be held in escrow pursuant to an escrow agreement.

(d) An owner or operator of a new facility shall submit the bond to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(e) A cash account or certificate of deposit shall only be held by a bank or financial institution that is subject to and complies with all applicable state and federal financial regulations.

(2) In addition to the financial assurance wording of instruments referenced in 40 C.F.R. 264.143, 40 C.F.R. 264.145, 40 C.F.R. 264.147, 40 C.F.R. 264.151, 40 C.F.R. 265.143, 40 C.F.R. 265.145, 40 C.F.R. 265.147, 40 C.F.R. 267.143, 40 C.F.R. 267.147, and 40 C.F.R. 267.151, the owner or operator shall include the following information if using cash or certificate of deposit:

(a) Date that the signatory signed the document in front of the notary public;

(b) Signature, seal, and the date that the notary public's commission expires;

(c) Dollar amount being posted in escrow in words and in United States dollars;

(d) Certificate number, date of issuance, and principal dollar amount in United States dollars, of each certificate of deposit;

(e) Cash account number, date of opening, and principal dollar amount in United States dollars of each cash account maintained;

(f) Signature of the authorized representative of the escrow agent; and

(g) Signature of the Director of the Kentucky Division of Waste Management.

(3) The cabinet shall be the beneficiary of the Escrow Agreement to demonstrate closure, post-closure, or corrective action for the cash account or certificate of deposit.

(4) The cabinet shall be empowered to draw upon the funds if the owner or operator fails to perform closure, post-closure, or corrective action in accordance with the respective plan.

(5) The sum of the cash account or certificate of deposit shall be in an amount at least equal to the amount of the current closure, post-closure, or corrective action cost estimate, except as established in this subsection.

(6) After each interest period is completed, if the current closure, post-closure, or corrective action cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the cash accounts or the certificate of deposit.

(a) If the value of the cash accounts or certificate of deposit is less than the amount of the new estimate, the owner or operator, within sixty (60) days of the change in the cost estimate, shall:

1. Deposit an amount into the cash accounts or the certificate of deposit so that its value after this deposit at least equals the amount of the current closure, post-closure, or corrective action cost estimate; or

2. Obtain other financial assurance as established in 40 C.F.R. Parts 264 or 265 to cover the difference.

(b) If the value of the cash account or the certificate of deposit is greater than the total amount of the current closure, post-closure, or corrective action cost estimate, the owner or operator may submit a written request to the cabinet for release of the

amount in excess of the current closure, post-closure, or corrective action cost estimate.

(7)(a) The terms of the escrow agreement for a cash account or certificate of deposit shall provide a provision for a notice of cancellation by certified mail to the owner or operator and to the cabinet prior to cancellation.

(b) The cancellation provision shall state that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the cabinet, as evidenced by return receipt.

(8) The owner or operator may cancel the cash account or certificate of deposit if the cabinet has given prior written consent. The cabinet shall provide a written consent if:

(a) An owner or operator substitutes alternate financial assurance as established in this administrative regulation; or

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with this administrative regulation.

(9)(a) An owner or operator or any other person authorized to perform closure, post-closure, or corrective action may request reimbursement for closure, post-closure, or corrective action expenditures by submitting itemized bills to the cabinet.

(b) Within sixty (60) days after receiving bills for closure, post-closure, or corrective action activities, the cabinet shall determine if the closure, post-closure, or corrective action expenditures are in accordance with the plan or approved, and if so, the cabinet may instruct the bank or financial institution to make reimbursements in those amounts as stated in writing if the cabinet determines that the expenditures are in accordance with the plan or approved.

(10) If a financial mechanism is used for multiple facilities, all matters arising in accordance with the financial mechanism related to the validity, interpretation, performance, and enforcement of the financial mechanism shall be determined in accordance with the law and practice of the Commonwealth of Kentucky.

(11) Except as provided in 401 KAR Chapter 39 and KRS 224.46, a variance or other waiver of any financial requirements shall not be granted by the cabinet.

(12) Upon request by the cabinet, the insurer shall provide to the cabinet a duplicate original of the policy including all endorsements thereon.

(13)(a) Based on evidence that the owner or operator may no longer meet the financial test for any financial assurance posted, the cabinet may require reports of financial condition from the owner or operator.

(b) If the cabinet determines, based on the reports of financial condition or other information, that the owner or operator no longer meets the financial test for any financial assurance posted, the owner or operator shall provide financial assurance using the appropriate instrument as specified in this administrative regulation within thirty (30) days after notification of the cabinet's determination.

(14) In addition to 40 C.F.R. 264.151 requiring an owner or operator to notify several Regional Administrators of their financial obligations, the owner or operator shall notify both the cabinet and all Regional Administrators of Regions that are affected by the owner or operator's financial assurance mechanisms.

Section 8. Releases from Solid Waste Management Units. The owner or operator of a facility, any person seeking a permit, or any person closing a facility for the treatment, storage, or disposal of hazardous waste, shall institute corrective action as established in this section, necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in the unit.

(1) A facility assessment shall be conducted consistent with the substantive requirements established in 401 KAR 100:030, Sections 6(1) and (2).

(2) A fee for the facility assessment shall be required as established in KRS 224.46-016(3).

(3)(a) Corrective action shall be established in the permit or other enforceable document in accordance with this administrative regulation.

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(b) The permit or other enforceable document shall contain:

1. A schedule of compliance for the corrective action, if corrective action will not be completed prior to issuance of the permit or closure of the facility; and

2. An assurance of financial responsibility for completing the corrective action.

(4)(a) A required facility investigation shall be conducted consistent with the requirements established in 401 KAR 100:030, Section 6(3) through (8), Section 7(2)(a)1 and 2, and Section 7(2)(b) and (c).

(b) A fee for the facility investigation shall be required as established in KRS 224.46-016(4) and 224.46-018(5)(a).

(5)(a) A required plan or report for corrective action shall be conducted consistent with the substantive requirements established in 401 KAR 100:030, Section 8(1) and (3) and Section 9(1) and (2).

(b) A fee for corrective action shall be required as established in KRS 224.46-016(4) and 224.46-018(5)(b).

(6) The owner or operator shall implement corrective actions beyond the facility property boundary, if necessary to protect human health and the environment, unless the owner or operator demonstrates to the cabinet that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain permission to implement corrective actions beyond the facility property boundary.

(a) The owner or operator shall not be relieved of all responsibility to clean up a release that has migrated beyond the facility property boundary if off-site access is denied.

(b) On-site measures to address releases beyond the facility property boundary shall be determined in accordance with 401 KAR Chapter 39.

(c) An assurance of financial responsibility for corrective action for releases beyond the facility property boundary shall be provided.

(7) This section shall not apply to a remediation waste management site unless it is part of a facility subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

(8) The schedule for closure of each hazardous waste management unit and for final closure of the facility required to be included in the closure plan established in subsection (5) of this section, shall also comply with the requirements in KRS 224.46-520(8).

Section 9. Exceptions and Additions. (1)(a) In the event of a release or threatened release of a pollutant or contaminant to the environment the facility shall comply with the requirements of 401 KAR 39:060, Section 6(1).

(b) If the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition shall be repaired in accordance with KRS 224.1-400.

(c) The reference to "EPA notification procedures" referenced in 40 C.F.R. Parts 264 to 267 shall be replaced with the notification procedures established in paragraph (a) of this subsection.

(2) Any reports, notifications, information, or documents required to be submitted to EPA, shall also be submitted to the cabinet at the same time.

(3) In addition to Section 3008 of RCRA, KRS 224.10-420 through 224.10-470, 224.46-530, and 224.99-010 shall apply.

(4) In addition to Section 3004(o)(1) of RCRA, KRS 224.46-530(1)(h) and (i), Sections 1 and 2 of this administrative regulation shall apply.

(5) The citation to Section 3004(k) of RCRA shall be replaced with KRS 224.1-010(43).

(6) In addition to the requirements in Section 3005 of RCRA, KRS 224.46-520, KRS 224.46-530, 401 KAR 39:060, and this administrative regulation shall apply.

(7) In addition to Section 7003 of RCRA, KRS 224.10-410 shall apply.

(8) In addition to Section 3005(j)(1) of RCRA, Sections 1 and 2 of this administrative regulation shall apply.

(9) In addition to Sections 3004(o)(2) and (3), Section 1 of this administrative regulation shall apply.

(10) In addition to Sections 3005(i)(2), (3), (4), and (13), Section 2 of this administrative regulation shall apply.

(11) The requirements in Section 3010(a) of RCRA shall be replaced with the requirements established in 401 KAR 39:080, Section 1(2).

(12) In addition to Section 3019 of RCRA, KAR 39:060, and KRS 224.46-520(1) shall apply.

(13) In addition to Section 3004(d) of RCRA, KRS 224.46-520(2) shall apply.

(14) Any decision to shorten the post-closure period or the post-closure monitoring and maintenance of a permitted facility shall be made in accordance with KRS 224.46-520(4).

(15) Waste, used oil, or material contaminated with dioxins or hazardous wastes shall not be used as a dust suppressant.

(16) In addition to the import notifications referenced in 40 C.F.R. 264.12(a) and 40 C.F.R. 265.12(a) being submitted to the U.S. EPA, a copy shall be submitted to the cabinet at the same time.

(17) In addition to the requirements in 40 C.F.R. Part 264 and 40 C.F.R. Part 265, owners and operators of hazardous waste treatment, storage, and disposal facilities and owners and operators of interim status hazardous waste treatment, storage, and disposal facilities shall prepare a Hazardous Waste Annual Report for the cabinet annually as established in 401 KAR 39:080, Section 1(8)(a).

(18) The citations to Sections 301, 307, and 402 of the Clean Water Act in 40 C.F.R. Part 264 and 40 C.F.R. Part 265, shall also include any applicable Kentucky requirements as established in 401 KAR Chapter 5.

(19) The citations to 40 C.F.R. Part 60 and 40 C.F.R. Part 61, shall also include 401 KAR 60:005 and 401 KAR 57:002, respectively.

(20) The citation to 40 C.F.R. 63, Subpart EEE shall also include 401 KAR 63:002, Section 2(4)(rr).

(21) The citation to 40 C.F.R. 124.15 in 40 C.F.R. 264.1030(c), 40 C.F.R. 264.1050(c), 40 C.F.R. 264.1080(c), 40 C.F.R. 265.1080(c) shall be replaced with 40 C.F.R. 124.5.

(22) The citations to 40 C.F.R. Part 144 in 40 C.F.R. Parts 264, 265, and 267 shall be replaced with 805 KAR 1:110.

(23) If multiple facilities are covered by the same financial assurance mechanism as referenced in 40 C.F.R. 264.143(h), 40 C.F.R. 264.145(h), 40 C.F.R. 264.147(a)(1)(i), 40 C.F.R. 264.147(b)(1)(i), 40 C.F.R. 265.143(g), 40 C.F.R. 265.147(a)(1)(i), 40 C.F.R. 265.147(b)(1)(i), and 40 C.F.R. 265.145(g), evidence of financial assurance shall be submitted to the cabinet and, as appropriate, to the Regional Administrator and other state directors.

(24) The citations to the Safe Drinking Water Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapters 6, 8, 9, and 10, and 805 KAR Chapter 1.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at 11 a.m.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for the hazardous waste permit program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for hazardous waste permitting, establishing financial assurance, establishing standards for storage, treatment, disposal, and recycling of hazardous waste and minimum closure and post-closure monitoring and maintenance as required by KRS 224.46-520. In addition, this administrative regulation is necessary to establish criteria for the cabinet to consider in making a



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determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents as required by KRS 224.50-130.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 224.46-520 requires the Energy and Environment Cabinet to promulgate administrative regulations establishing standards for hazardous waste permitting and persons engaging in the storage, treatment, disposal, and recycling of hazardous waste, and to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. KRS 224.50-130 establishes criteria the cabinet shall consider in making a determination to issue, deny or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards for a hazardous waste permit as required by KRS 224.46-520 and establishes criteria the cabinet shall consider in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents pursuant to KRS 224.50-130.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by establishing standards for hazardous waste permitting and persons engaging in the storage, treatment, disposal, and recycling of hazardous waste, and to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities and establishing criteria for the cabinet to consider in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage or disposal of nerve agents, instead of only establishing the fee for post-closure as it was previously established to do. In addition, this administrative regulation was modified for consistency with federal maximum contaminant levels for groundwater. In particular, the limits established for Aldicarb, Nickel, Silver, Arsenic, Barium, Chromium, Endrin, Lead, and Selenium were modified. This is a part of consolidating and streamlining the number of regulations for the hazardous waste program. In addition, this amendment after comments was made to clarify the destruction removal efficiency calculation formula.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish standards for hazardous waste permitting, establishing financial assurance, establishing standards for storage, treatment, disposal, and recycling of hazardous waste and minimum closure and post-closure monitoring and maintenance as required by KRS 224.46-520. In addition, this amendment is necessary to establish criteria for the cabinet to consider in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents as required by KRS 224.50-130. In addition, this amendment after comments was necessary to clarify the destruction removal efficiency calculation formula.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.46-520 requires the Energy and Environment to promulgate administrative regulations establishing standards for hazardous waste permitting and persons engaging in the storage, treatment, disposal, and recycling of hazardous waste, and to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. KRS 224.50-130 establishes criteria the cabinet shall consider in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the standards for a hazardous waste permit as required by KRS 224.46-520 and establishes criteria the cabinet shall consider in making a determination to issue, deny, or condition a permit for a hazardous waste site or facility for treatment, storage, or disposal of nerve agents pursuant to KRS 224.50-130.

(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 facilities that generate, transport, treat, store, and dispose of hazardous waste. There are approximately 16 treatment, storage, and disposal facilities, 384 large quantity generators, 412 small quantity generators, 2,853 very small quantity generators, 131 large quantity universal waste handlers, 142 used oil facilities, and 132 transporters in the Commonwealth of 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: The regulated entities will not be required to take any additional actions as a result of this administrative regulation. The standards for the hazardous waste permit program established in this consolidated administrative regulation are consistent with the current hazardous waste permit program established in an already effective 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 increase in cost for complying with this administrative regulation as the hazardous waste permit program is consistent with the current effective administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no benefit to compliance as there is no substantive change being made in this amendment.

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

(a) Initially: \$2.9M annually, for this program, as a whole.

(b) On a continuing basis: \$2.9M annually, for this program, as a whole.

(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 restricted funds, general funds 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 establishes review fees for solid waste management units only if there is a release. This is consistent with current regulation.

(9) TIERING: Is tiering applied? This administrative regulation applies to all entities regulated under the hazardous waste permit program. To apply tiering to the regulation would decrease costs for some entities while not for others.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 generate, transport, store, or dispose of hazardous wastes 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. Parts 264, 265, 266, and 267.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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, along with 401 KAR 39:120, will generate permitting review fees totaling approximately \$450,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years. Currently the division receives \$1.5M in federal grant funding to administer this program, as a whole.

(c) How much will it cost to administer this program for the first year? \$2.9M, as a whole.

(d) How much will it cost to administer this program for subsequent years? \$2.9M, as a whole.

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

Revenues (+/-): \$450,000 in permitting review fees + \$1.5M in federal grant funding for this program, as a whole.

Expenditures (+/-): \$2.9M for this program, as a whole.

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. Parts 264, 265, 266, and 267.

2. State compliance standards. KRS 224.46-520 and 224.50-130.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Parts 264, 265, 266, and 267.

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. This administrative regulation is more stringent than the federal counterpart in that concentration limits established in 40 C.F.R. 264.94 are replaced with the concentration limits consistent with the current Kentucky environmental performance standards. Section 5, facility location with regard to flood plains is in addition to the federal requirements. Section 6, chemical demilitarization, places additional requirements on nerve and blister agents. Section 7, financial assurance, allows an owner or operator to provide financial assurance by way of cash and certificates of deposit where the federal regulations do not. Section 8 imposes requirements in the event of a release for solid waste management units consistent with other hazardous waste permitted facilities, including the review fees. Section 9 requires release reporting and notification to the cabinet, gives enforcement authority and establishes penalization by the cabinet.

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 Kentucky administrative regulations. The more stringent concentration requirements established in this regulation are consistent with the current Kentucky environmental performance standards. Allowing cash and certificates of deposit as a mechanism for financial assurance gives a facility additional means to provide financial assurance.

#### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amended After Comments)

#### 401 KAR 39:120. Permit review, determination timetables, and[Application] fees.

RELATES TO: KRS 224.1, 224.10, 224.40, 224.46, 224.50, 224.99, 40 C.F.R. Part 270

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-220, 224.46-550

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(20) authorizes[states] that the Energy and Environment[Environmental and Public Protection] Cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications.[The purpose of] This administrative regulation[chapter is to establish a] establishes timetables for the review and determination of hazardous waste permit applications and the fee schedule for hazardous waste management. [This administrative regulation establishes the fee schedule for storage, treatment or disposal facility permits.]

Section 1. Applicability. (1) This administrative regulation shall apply[applies] to:

(a) An owner or operator of a hazardous waste site or facility in Kentucky that submits an application for:

1. A[All] treatment, storage, or disposal facility permit;
2. A post-closure permit;
3. A permit that contains exposure information reports for treatment, storage, or disposal of hazardous waste in a surface impoundment or landfill;
4. An emergency permit;
5. A land treatment demonstration permit; or
6. An emergency identification number;

(b) A person who:

1. Is a recycler of hazardous waste; or
2. Petitions the cabinet to include additional wastes as a universal waste;

(c) A marketer or burner of hazardous waste fuel or used oil burned for energy recovery;

- (d) A large quantity handler of universal waste;
- (e) A used oil processor, refiner, burner, or marketer;
- (f) A hazardous waste transporter;
- (g) A hazardous waste generator; and
- (h) A generator who treats hazardous waste on-site[facilities required by 401 KAR Chapter 38 to submit an application for a hazardous waste site or facility permit].

(2) ~~[The provisions of] This administrative regulation shall apply to all applications for hazardous waste site or facility permits submitted, including those applications that [on or after the effective date of this administrative regulation, and to such applications which] are not complete[-, as determined by the cabinet, by the effective date of this administrative regulation].~~

Section 2. Filing Fees. (1) Any owner or operator who submits a Part A Permit Application, incorporated by reference in 401 KAR 39:060, for a treatment, storage, or disposal facility shall submit ~~[with the application]~~ a filing fee in the amount of \$1,000.

(2)(a) Any owner or operator that submits an application for a post-closure permit or permit renewal for a hazardous waste site or facility shall submit a filing fee in the amount of \$4,000.

(b) The filing fee established in paragraph (a) of this subsection shall not apply to owners and operators of hazardous waste sites or facilities that submit a post-closure plan as part of an application for an operation permit for a landfill required in 401 KAR 39:060, Section 5.

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Section 3. Review Fees. (1) ~~Permitting Fees.~~ In addition to those fees established by ~~identified in~~ KRS 224.46-016, any owner or operator who submits a permit application for a treatment, storage, or disposal facility shall submit ~~with the application~~ the following unit fees:

- (a) Containment buildings - \$7,400;
- (b) Drip pads - \$3,700;
- (c) Miscellaneous units:
  1. Treatment unit - \$15,800;
  2. Storage unit - \$3,700; and
  3. Disposal unit - \$12,200; and
- (d) Boilers and industrial furnaces - \$19,400.

(2) ~~Closure Fees.~~ Any owner or operator ~~that~~ ~~who~~ submits a closure plan for a treatment, storage, or disposal facility shall submit ~~with the application~~ the following fees:

- (a) A closure plan fee of \$3,600;
- (b) A [RCRA] facility assessment fee in accordance with KRS 224.46-016; and
- (c) A review fee for each type of hazardous waste management unit being closed.

1. The fee for incinerators shall be submitted one (1) time for each different type of incinerator.

2. The fees for tanks and containers shall be submitted one (1) time for each different tank design or container type.

3. Tank design criteria shall include ~~includes~~ differences in materials of construction, pressure vessels, nonpressure vessels, shape, and ancillary equipment.

4. Container types shall include drums, tote bins, bottles, and roll-off boxes.

5. The fees shall be:

- a. ~~1.~~ Incinerator - \$2,000;
- b. ~~2.~~ Waste piles - \$1,000;
- c. ~~3.~~ Surface impoundments - \$1,500;
- d. ~~4.~~ Tanks - \$660;
- e. ~~5.~~ Containers - \$460;
- f. ~~6.~~ Land treatment - \$2,000;
- g. ~~7.~~ Landfill - \$2,000;
- h. ~~8.~~ Containment buildings - \$660;
- i. ~~9.~~ Drip pads - \$660;
- j. ~~10.~~ Miscellaneous units:
  - (i) ~~a.~~ Treatment unit - \$2,000;
  - (ii) ~~b.~~ Storage unit - \$660; and
  - (iii) ~~c.~~ Disposal unit - \$1,000; and
- k. ~~11.~~ Boilers and industrial furnaces - \$2,000.

(3) ~~Corrective action fees.~~ Any owner or operator ~~that~~ ~~who~~ is required to submit to the cabinet a [RCRA] facility investigation plan or a corrective action plan shall submit with the plans the applicable review fee upon the request of the cabinet. These fees shall be the cost of review, but shall not exceed the following amounts:

(a) [RCRA] Facility investigation plan - the fee as established in KRS 224.46-016;

(b) Corrective action plan - the fee as established in KRS 224.46-016;

- (c) Corrective action management unit - \$3,700; and
- (d) Temporary unit:

1. Temporary containers - \$3,000; and
2. Temporary tanks - \$3,700.

(4) ~~Modification fees.~~ In addition to those fees established by ~~specified in~~ KRS 224.46-018, any owner or ~~of~~ operator ~~that~~ ~~who~~ modifies a permit shall submit ~~with the modification~~ the ~~following~~ fees established in this subsection. ~~;~~

(a) An owner or operator ~~that~~ ~~who~~ modifies an existing hazardous waste treatment, storage, or disposal facility permit to add one (1) or more waste streams, or a waste stream with the same characteristic that is already permitted, shall submit the following fees along with the modification:

1. Containment buildings - \$3,400;
2. Drip pads - \$3,400;
3. Miscellaneous units:
  - a. Treatment unit - \$5,500;
  - b. Storage unit - \$3,400; and
  - c. Disposal unit - \$4,500; and

4. Boilers and industrial furnaces - \$6,500.

(b) An owner or operator ~~that~~ ~~who~~ modifies an existing hazardous waste treatment, storage, or disposal facility permit by constructing or operating an additional hazardous waste treatment, storage, or disposal unit, or by substantially modifying an existing hazardous waste treatment, storage, or disposal unit, shall submit the following fees along with the modification:

1. Containment buildings - \$7,400;
2. Drip pads - \$3,700;
3. Miscellaneous units:
  - a. Treatment unit - \$15,800;
  - b. Storage unit - \$3,700; and
  - c. Disposal unit - \$12,200; and
4. Boilers and industrial furnaces - \$19,400. ~~(c) 1. An owner or~~

~~operator that modifies a registration in accordance with 401 KAR 39:080, Section 1(5)(b) shall submit a registration modification fee in the amount of fifty (50) dollars.~~

~~2. The registration modification fee established in subparagraph 1. of this paragraph shall not apply to a registrant who modifies his registration by only making a name change.~~

~~(5)(a) Any owner or operator that submits an application for a post-closure permit or permit renewal for a hazardous waste site or facility, but has not received a permit, shall submit a review fee in the amount of \$9,000.~~

~~(b) This fee shall not apply to owners and operators of hazardous waste sites or facilities that submit a post-closure plan as part of an application for an operation permit for a landfill required in 401 KAR 39:060, Section 5 and pay the fees required by this administrative regulation.~~

~~(6) Any owner or operator that submits an application for an emergency permit shall submit a review fee in the amount of \$750.~~

~~(7) Any owner or operator that submits an application for land treatment disposal shall submit a review fee in the amount of \$5,500.~~

~~(8) In addition to any other required registration fees, any owner or operator that submits an application for an emergency identification number shall also submit a review fee in the amount of \$100.~~

~~(9) A person petitioning to change the classification of a hazardous waste or a category of hazardous waste to a universal waste shall submit a review fee in the amount of \$2,500.~~

~~(10) A person who submits a permit application containing an exposure information report for treatment, storage, or disposal of hazardous waste in a surface impoundment or landfill shall submit a review fee in the amount of \$5,000.~~

Section 4. Registration and Fees. (1) In addition to those fees established by KRS 224.46-012 for generators of hazardous waste, an annual registration fee in the amount of \$300 shall be submitted:

(a) Per process for a hazardous waste generator who treats hazardous waste on site;

(b) Per process for a recycler of hazardous waste;

(c) By a marketer or burner of hazardous waste fuel burned for energy;

(d) By a used oil processor, refiner, burner, or marketer; and

(e) By a Kentucky based hazardous waste transporter. ~~;~~ **and (f) By a very small quantity generator**

(2) In addition to those fees established by KRS 224.46-012 for generators of hazardous waste, an initial registration fee in the amount of \$300 shall be submitted for:

(a) Nonhazardous used oil activities;

(b) A large quantity handler of universal waste; and

(c) A non-Kentucky based hazardous waste transporter.

**(3)(a) An owner or operator that modifies a registration in accordance with 401 KAR 39:080, Section 1(5)(b) shall submit a registration modification fee in the amount of fifty (50) dollars.**

**(b) The registration modification fee established in paragraph (a) of this subsection shall not apply to a registrant who modifies a registration by only making a name change.**

**(4)(a) An annual registration fee in the amount of \$200**

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shall be submitted by a very small quantity generator who submits a registration in accordance with 401 KAR 39:080, Section 1, except as established in subsection (b) of this section.

(b) For a person who submits more than one very small quantity generator registrations under common ownership, that are received on the same date by the hazardous waste branch, an initial fee of \$200 shall be charged to the first registration, and a \$150 fee shall be charged to each additional registration.

Section 5. Submittal of Fees. (1) The fees required in Sections 2 through 4 of this administrative regulation shall be submitted to the cabinet with the application, registration, petition, or other required documentation related to the request.

(2) Fees shall not be refunded if an application, registration, petition, or other request is withdrawn.

(3)(2) All checks or money orders shall be made payable to the Kentucky State Treasurer and note that the fee is for hazardous waste branch.

(4) The cabinet shall refund any fees paid in accordance with Section 1(1)(g) of this administrative regulation, if the cabinet fails to provide a written determination within sixty (60) days of receipt of a generator's request to treat hazardous waste on-site.

Section 6. Permit Review and Determination Timetables. (1) The official date of receipt for documents associated with a hazardous waste permit shall be the date the document is stamped received by the Division of Waste Management.

(2) The applicant for a hazardous waste permit shall have the burden of establishing that the application is in compliance with all applicable requirements of KRS Chapter 224 and 401 KAR Chapter 39.

(3)(a) If a Part A Permit Application, incorporated by reference in 401 KAR 39:060, is required by KRS Chapter 224 and 401 KAR Chapter 39, the applicant shall submit that application at least forty-five (45) days prior to submitting any of the applications set forth in paragraph (b) of this subsection.

(b) The cabinet shall review all hazardous waste permit applications and make a determination to issue or deny a permit within the following timetables:

1. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for hazardous waste permits for storage in containers or tanks only within 180 calendar days;

2. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for hazardous waste permits for treatment and storage in containers or tanks within 365 calendar days;

3. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for hazardous waste incinerators within 365 calendar days;

4. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for facilities with land-based units, including surface impoundments, waste piles, land treatment units, and landfills, and other miscellaneous units within 365 calendar days;

5. Class 3 modifications to a hazardous waste permit within 365 calendar days;

6. Class 1 and Class 2 modifications to a hazardous waste permit requiring approval within ninety (90) calendar days;

7. Closure plan with groundwater monitoring within 365 calendar days;

8. Closure plan without groundwater monitoring within 180 calendar days; and

9. Renewal of permits shall follow the same timetables as established in subparagraphs 1. through 4. of this paragraph for the applicable type of unit.

(c) The timetables established in paragraphs (a) and (b) of this subsection may be extended to a mutually agreed upon timetable, at the initiative of either the cabinet or the applicant.

1. The purpose and period of the extension shall be in writing and, if agreed to, shall be signed by both the cabinet and the applicant.

2. The agreement to extend the timetable shall become part of the cabinet's administrative record.

(d) If a hazardous waste permit application requires more than

one (1) type of permit action as established in paragraph (b) of this subsection, the review time for each permit action shall apply and run consecutively when computing the total review time for the issuance or denial of the permit.

(4) The time periods established in subsection (3) of this section shall not run during the following intervals:

(a) From the date the cabinet mails or hand delivers a notice of deficiency to an applicant until the date the Division of Waste Management stamps as received a complete response to the deficiencies;

(b) Sixty (60) days from the date of any public hearing or meeting on the application to allow the cabinet time to consider public comments;

(c) From the date the cabinet submits an application to U.S. EPA for overview until the date the cabinet receives U.S. EPA's comments;

(d) From the date a permit application is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are final and all parties are in compliance with all final orders resulting from those hearings; and

(e) If a governing body holds a public hearing pursuant to KRS 224.40-310(7), sixty (60) days from the date of publication of the public notice on the hearing.

(5) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or the applicant.

(a) If the permits are coordinated, the cabinet shall notify the applicant and indicate the time frames for which the intermediate actions and final permit actions shall be accomplished.

(b) The established time frame for final action shall not exceed the last date for action required by KRS Chapter 224 and 401 KAR Chapter 39, based on all applications being considered and their filing dates.

(6)(a)1. If a notice of deficiency is sent to an applicant, the applicant shall have forty-five (45) calendar days to respond to the notice of deficiency.

2. The forty-five (45) day time period may be extended by agreement between the cabinet and the applicant.

(b) Failure to respond to a notice of deficiency within the specified time shall be grounds for denial of the permit.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at 11 a.m.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email [Louanna.Aldridge@ky.gov](mailto:Louanna.Aldridge@ky.gov)

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes timetables for the review and determination of hazardous waste permit applications and the fee schedule for hazardous waste management.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish timetables for the review and determination of hazardous waste permit applications and the fee schedule for hazardous waste management as required by KRS 224.46-550, KRS 224.10-100(20) and KRS 224.10-220.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(20) states that the Energy and Environment Cabinet may provide, by administrative regulation, for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. KRS

224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes timetables for the review and determination of hazardous waste permit applications and the fee schedule for hazardous waste management as required by KRS 224.46-550, KRS 224.10-100(20), and KRS 224.10-220.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by establishing a fee schedule and timetables for the review and determination of hazardous waste permit applications instead of only establishing the fee schedule as it was previously established to do. This is a part of consolidating and streamlining the number of regulations for the hazardous waste program. In addition, this amendment after comments was made to clarify that only very small quantity generators who register will be charged an annual fee. The fee for very small quantity generators was decreased from \$300 to \$200 with a tiered amount of \$150 after the initial registration if multiple registrations are submitted at the same time.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish timetables for the review and determination of hazardous waste permit applications and the fee schedule for hazardous waste management as required by KRS 224.46-550, KRS 224.10-100(20), and KRS 224.10-220. In addition, the necessity for the amendment after comments was made to clarify that only those very small quantity generators who voluntarily register will be charged an annual fee, and to decrease the fee for very small quantity generators from \$300 to \$200 with a tiered amount of \$150 after the initial registration if multiple registrations are submitted at the same time.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(20) states that the Energy and Environment Cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes timetables for the review and determination of hazardous waste permit applications and the fee schedule for hazardous waste management as required by KRS 224.46-550, KRS 224.10-100(20), and KRS 224.10-220.

(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 facilities that generate, transport, treat, store and dispose of hazardous waste. There are approximately 16 treatment, storage, and disposal facilities, 384 large quantity generators, 412 small quantity generators, 2,853 very small quantity generators, 131 large quantity universal waste handlers, 142 used oil facilities, and 132 transporters in the Commonwealth of 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: The regulated entities will not be required to take any additional actions as a result of this administrative regulation. The schedule of fees and timetables established in this consolidated administrative regulation are consistent with the current schedule of fees and timetables established in an already effective administrative regulation.

(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 comply with the administrative regulation will increase for transporters of hazardous waste due to their inclusion to the \$300 annual registration fee for Kentucky based entities and a \$300 initial registration fee for non-Kentucky based entities. The cost to comply for very small quantity generators that voluntarily register will be \$200 with a tiered amount of \$150 after the initial registration if multiple registrations are submitted at the same time. There are no other increases in cost for complying with this administrative regulation as the remainder of the schedule of fees is consistent with the current effective administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no benefit to compliance as there is no substantive change being made in this amendment.

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

(a) Initially: \$2.9M annually, for this program, as a whole.

(b) On a continuing basis: \$2.9M annually, for this program, as a whole.

(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 restricted funds, general funds 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: This amendment imposes new registration fees for hazardous waste transporters and very small quantity generators who voluntarily register. These new fees will provide the agency with necessary receipts to cover the costs of administering this program, as a whole.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes hazardous waste fees for registration, filing, review, closure, and assessment. It also imposes new registration fees for hazardous waste transporters and very small quantity generators who voluntarily register.

(9) TIERING: Is tiering applied? Tiering is applied. Tiering was applied to very small quantity generators who voluntarily register multiple generators at the same time. The initial \$200 will be charged to the first registration, and \$150 to additional registrations to reduce the burden of fees.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 generate, transport, store, or dispose of hazardous wastes 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. This administrative regulation is not required by federal statute or federal regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate approximately \$478,359 in hazardous waste permitting fees the first year for the Division of Waste Management. In addition, the division receives \$1.5M in federal grant funding to administer the program, as a whole.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate approximately \$478,359 in hazardous waste permitting fees in subsequent years for the Division of Waste Management. In addition, the division receives \$1.5M in federal grant funding to administer the program, as a whole.

(c) How much will it cost to administer this program for the first year? \$2.9M, as a whole.

(d) How much will it cost to administer this program for subsequent years? \$2.9M, as a whole.

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

Revenues (+/-): \$478,359 + \$1.5M in federal grant funding for this program, as a whole.

Expenditures (+/-): \$2.9M for this program, as a whole.

Other Explanation: The amount of revenue generated will depend on the number of registrations, applications, and modifications received and cannot be determined at this time as the very small quantity generators will be registering on a voluntary basis.

**ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Waste Management  
(Amended After Comments)**

**401 KAR 48:090. Operating requirements for contained landfills.**

RELATES TO: KRS 224.1[224.04], 224.10, 224.40, 224.43, 224.99, 40 C.F.R. Part 761

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to promulgate administrative regulations for the management, processing, or disposal of solid wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of solid waste obtain a permit. This chapter establishes the minimum technical standards for solid waste sites or facilities. This administrative regulation establishes[sets forth] the requirements for contained landfills.

Section 1. General. The owner or operator of a contained landfill shall operate the facility in accordance with the requirements of KRS Chapter 224 and 401 KAR Chapters 30 through 49[the administrative regulations promulgated pursuant thereto], the conditions of the solid waste permit issued by the cabinet, and the approved application filed with the cabinet.

Section 2. Procedures for Excluding the Receipt of Prohibited[~~Hazardous~~] Waste. (1) The owner or operator of a solid waste contained landfill shall implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as established[defined] in 401 KAR Chapter 39,[34] polychlorinated biphenyls (PCB) wastes as established[defined] in 40 C.F.R. Part 761, and TENORM waste generated from oil and gas development activities containing combined Radium 226 and Radium 228 at concentrations exceeding limits established by 902 KAR 100:180, Section 6(1), except as authorized by 902 KAR 100:180, Section 6(2). This program shall include, at a minimum:

(a) Random inspections of incoming loads;

(b) Inspection of suspicious loads;

(c) Records of any inspections;

(d) Training of facility personnel to recognize regulated hazardous waste; and

(e) Procedures for notifying the proper authorities if a prohibited[regulated hazardous] waste is disposed or discovered at the facility; and

(f) Employee safety, health, training, and equipment to be used in inspection.

(2) The owner or operator shall implement [the following] additional inspection standards to meet the requirements of

subsection (1) of this section.[:]

(a) The owner or operator shall have a program, approved by the cabinet pursuant to KRS 224.10-100, to inspect all waste entering a contained landfill. The program to exclude hazardous wastes shall include:

1. Random inspections in time, but uniformly distributed to all waste sources based on volume; and

2. Identification data concerning the hauler on the operating inspection record including name of the driver, name of the hauler, address, source, volume, and waste characteristics. The owner or operator shall maintain a record of the inspections in accordance with the approved recordkeeping requirements.

(b) Upon discovery of hazardous waste, the owner or operator of a contained landfill shall isolate the load and notify the cabinet immediately.

Section 3. TENORM Waste Disposal from Oil and Gas Development and Production. (1) TENORM that meets the criteria established in 902 KAR 100:180, Section 6(1) that is to be land disposed[6(1)(a)] shall be disposed:

(a) In a contained landfill permitted in accordance with 401 KAR Chapters 47 and 48 and as authorized by 902 KAR 100:180, Section 6(1)(a);[:] or

(b) As established in subsection (2) of this section as authorized by 902 KAR 100:180, Section 6(1)(c).

(2) TENORM that meets the criteria established in 902 KAR 100:180, Section 6(2) that is to be land disposed[6(2)(a)] shall be disposed in a contained landfill permitted in accordance with 401 KAR Chapters 47 and 48 and as authorized by 902 KAR 100:180, Section 6(2)(a) that meets:

(a) The operating requirements established in 902 KAR 100:180; and

(b) Final cap design requirements established in 401 KAR 48:080, Section 8, which shall include both a synthetic liner established in 401 KAR 48:080, Section 9(5) and a low permeability soil layer meeting the design standards in 401 KAR 48:080, Section 8(4) or Section 11.

(3)(a) A contained landfill shall not accept TENORM waste described in 902 KAR 100:180, Sections 6(1) or 6(2) without having received approval from the cabinet except as established in subsection (b) of this section.

(b) An owner or operator of a contained landfill that possesses a solid waste permit and began accepting TENORM waste described in 902 KAR 100:180, Sections 6(1) or 6(2) before October 1, 2017 and will continue to accept the TENORM waste shall:

1. Manage the TENORM waste in accordance with 902 KAR 100:180 and 401 KAR Chapters 47 and 48;

2. Submit an application for a minor permit modification by July 1, 2018; and

3. Not accept TENORM waste described in 902 KAR 100:180, Sections 6(1) or 6(2) after January 1, 2019 without having received approval from the cabinet of the permit modification required in subparagraph 2. of this paragraph.

Section 4[3]. Cover Material and Disease Vector Control Requirements. (1)(a)[Daily cover.]:

1. The owner or operator shall place a minimum of six (6) inches of cover over all exposed solid waste at the end of each working day or, for continuously operating landfills, once every twenty-four (24) hours. The purpose of this cover shall be to control disease, fires, blowing litter, and disease vectors.

2. The owner or operator shall only use soil or properly weathered or crushed shales, siltstones or other materials as approved by the cabinet pursuant to KRS 224.10-100.

3. Soils and other weathered, earthen[~~earthened~~] material[~~that have been~~] contaminated with petroleum may be used as daily cover if:

a. The[the] maximum benzene concentration of the material is less than or equal to one (1.0) ppm; and

b. The[if the] material is not placed as daily cover during a precipitation event.[:]

(b) The daily cover for material subject to 902 KAR 100:180

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shall be an additional six (6) inches of cover for a total minimum of twelve (12) inches of cover over all exposed waste containing TENORM at the end of each working day or for continuously operating landfills, once every twenty-four (24) hours.

~~(c)(b)~~ The daily cover shall not have any protruding waste, except for the occasional litter embedded into the surface, which shall not exceed ten (10) percent of the cover area.;

~~(d)(c)~~ Daily cover shall be compacted upon application and provide positive drainage. The owner or operator shall place daily cover to allow for proper drainage and shall immediately compact and grade the soil.;

~~(e)(d)~~ The owner or operator may remove daily cover to facilitate the vertical passage of methane gas and leachate and shall recover the exposed areas within eight (8) hours of exposure. Daily cover required by subsection (b) of this section shall not be removed.; and

~~(f)(e)~~ The owner or operator shall dispose of any daily cover removed as established in paragraph~~under subsection (4)~~ (d) of this subsection~~section~~ as solid waste.

(2) Interim cover period. The owner or operator~~shall~~:

(a)1. Shall place~~Place~~ an additional six (6) inches of interim cover over any area that will~~shall~~ not receive additional solid waste within thirty (30) calendar days of the last waste placement.

2. With the daily cover applied in accordance with subsection (1) of this~~the~~ section, the additional interim cover shall increase the total cover depth to twelve (12) inches;

(b) May, on the day waste is to be placed over an area that is covered with daily and interim cover,~~an owner or operator may~~ remove a maximum depth of six (6) inches of interim cover over the area of the cell for that day's operation;

(c) Shall place, compact, and grade the interim cover to effect proper drainage; and

(d) Shall apply temporary erosion controls at the time of placing interim cover.

(3) Long term cover. The owner or operator:

(a) Shall apply an additional eighteen (18) inches of long-term cover over all areas that shall not receive additional waste within four (4) months by September 15 of each year. With the daily and interim cover, the total thickness of the cover in these areas shall be thirty (30) inches;

(b) May remove a maximum of eighteen (18) inches of the thirty (30) inches of cover in this subsection within the seven (7) calendar days prior to additional waste placement. The owner or operator may remove remaining soil leaving no less than six (6) inches of daily cover from the daily cell area on the day additional waste is to be placed;

(c) Shall place, compact, and grade the long term cover to effect proper drainage; and

(d) Shall complete erosion controls and~~proper~~ seeding of interim and long-term cover during the fall seeding season.

(4) Final cover.

~~(a)~~ The owner shall initiate the application of final cover:

1.~~(a)~~ Within thirty (30) days of filling a completed phase of the landfill to final design grade; and

2.~~(b)~~ Annually so~~such~~ that the final cap is in place by September 15 in all areas of the landfill that have reached final grade by August 15 of each year.

~~(b)(c)~~ An alternate schedule may be approved by the cabinet ~~if~~~~when~~ construction techniques shall preclude construction by the ~~above referenced~~ dates established in paragraph (a) of this subsection.

(5) Cover report. The owner or operator shall record, on a form approved by the cabinet pursuant to KRS 224.10-100, the daily cell locations, specific location of TENORM waste placement within the cell, and dates of cover applications at the landfill including:

~~(a)~~ Daily usage area.;

~~(b)~~ Daily, interim, long term, and final cap installation dates; and

~~(c)~~ Certification~~certification~~ reports.

Section 5[4]. Explosive Gases Control. (1) The owner or operator of a contained solid waste landfill shall ensure that the concentration of methane gas:

~~(a) Generated~~~~The concentration of methane gas generated~~ by the facility does not exceed twenty-five (25) percent of the lower explosive limits (LEL) for methane in facility structures (excluding gas control or recovery system components); and

~~(b) Does~~~~The concentration of methane gas does~~ not exceed the lower explosive limit for methane at the facility property boundary.

(2) The owner or operator of a contained landfill shall quarterly monitor for explosive gas~~at the following locations~~:

(a) Underneath or in the low area of each on-site building;

(b) At locations along the boundary as shown in the permit;

(c) At each gas passive vent installed under the final closure cap;

(d) At any potential gas problem areas, as revealed by dead vegetation or other indicators; and

(e) At any other points required by the permit.

(3) The owner or operator shall record the date, time, location, percent lower explosive limit, and other pertinent information on the recordkeeping form approved by the cabinet pursuant to KRS 224.10-100.

(4) The owner or operator shall install, operate, and maintain a gas detector with an alarm set at twenty-five (25) percent of the lower explosive limit in each on-site building.

(5) If methane gas levels exceeding the limits~~specified~~ in subsection (1) of this section are detected, the owner or operator shall:

(a) Take all necessary steps to ensure immediate protection of human health;

(b) Immediately notify the cabinet of the methane gas levels detected and the immediate steps taken to protect human health; and

(c) Within fourteen (14) days, submit to the cabinet for approval a remediation plan for the methane gas releases. The plan shall describe the nature and extent of the problem and the proposed remedy. The plan shall be implemented upon approval by the cabinet pursuant to KRS 224.10-100.

Section 6[5]. Air Criteria. (1) Except as established in paragraph (b) of this subsection, the owner or operators of contained landfills shall not allow~~permit~~ or engage in open burning of waste. Any open burning shall be immediately extinguished.

(a) Wastes that are burning or smoldering shall not be deposited in the fill. The~~Such~~ materials shall be deposited in a hot load area designated in the permit.

(b) The cabinet may grant emergency permission to burn in accordance with 401 KAR 47:150. The owner or operator shall follow the plan approved for these~~such~~ purposes.

(2) The owner or operator shall~~properly~~ control dust on haul roads and other areas to prevent a nuisance to surrounding areas.

Section 7[6]. Access Requirements. (1) The owner or operator of a contained solid waste landfill shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes to protect human health and the environment.

(a) The owner or operator shall use artificial barriers, natural barriers, or both, as appropriate.

(b) Each access point shall be controlled by lockable entrance ways.

(2) The owner or operator shall construct and maintain:

~~(a)~~~~Lockable entrance ways at all access points;~~

~~(b)~~ The major access road from a publicly maintained highway to the landfill;

~~(b)(c)~~ The perimeter road; and

~~(c)(d)~~ An all-weather road to within 200 feet of the working face.

(3)~~(a)~~ The owner or operator of a contained landfill shall remove debris, mud, and waste from vehicles before leaving the site.

~~(b)~~ The owner or operator shall be responsible for removing landfill debris, mud, and waste from off-site roadways.

Section 8[7]. Water Controls. The owner or operator of a

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contained solid waste landfill shall:

(1) Maintain the site as necessary to prevent erosion or washing of the fill, and grade as necessary to drain rainwater from the fill area and to prevent standing water[.];

(2) Maintain all run-on and run-off control systems as necessary to maintain original design capacity as required by ~~Section 2 of~~ 401 KAR 48:070, Section 2. This can include ~~includes, but shall not be limited to~~:

(a) Removal of sediment from run-off control structures. The site design shall specify the method to be used to determine the removal in the event that ~~when~~ clean-out shall occur;

(b) Removal of debris, wastes, and soil from diversion and run-off ditches to maintain the design capacity; and

(c) Construction and maintenance of temporary diversion ditches around the current working face.

1. The owner or operator shall specify the location of the temporary ditches in the operational plan required by 401 KAR 47:190.

2. ~~The and the~~ ditches shall be approved by a professional engineer registered in the Commonwealth of Kentucky.

Section 9[8]. Waste Restrictions. (1) The owner or operator of a contained landfill shall only dispose of wastes that:

(a) Are not hazardous wastes regulated pursuant to 401 KAR Chapters 30 and 39 ~~through 40~~, except for limited quantity hazardous wastes and exempt spill residues;

(b) Do not contain free liquids as determined by the cabinet pursuant to KRS 224.10-100; and

(c) Are specified in the approved permit application.

(2) The owner or operator shall comply with the recordkeeping and reporting requirements ~~requirement~~ of Section 11 of this administrative regulation pertaining to the location of disposed limited quantity hazardous waste and exempt spill residues.

Section 10[9]. Working Face Requirements. (1) Within two (2) hours of receipt, the owner or operator shall spread wastes in loose layers not exceeding twenty-four (24) inches in depth and compact it to the maximum practicable density.

(a) The owner or operator shall use the equipment specified in the permit for compaction.

(b) The operator shall pass the equipment over 100 percent of the waste surface at least four (4) times.

(c) Each loose layer shall be fully compacted before any additional waste is placed.

(2) The owner or operator shall not exceed the lift height specified in the permit.

(3) The owner or operator shall not place an initial lift containing any object that may damage the bottom liner. The owner or operator shall protect the liner system with a layer of dirt, waste, or similar blanket placed between operating equipment and the liner.

(4) The daily working face shall be restricted to the smallest area practical for working face operation.

(5) The completed cell shall consist of the solid waste compacted during one (1) working day.

(6)(a) The owner or operator shall prohibit scavenging within 100 feet of the working face.

(b) All salvage and recycling shall occur at areas so designated in the permit.

(7) The owner or operator shall only allow access to the landfill ~~if~~ when operating personnel are on the site.

(8) The owner or operator shall not accept solid waste at a rate that exceeds the rated capability of the operational compaction and cover equipment available on site.

(9) The owner or operator shall not accept solid waste without landfill personnel present to supervise the unloading.

(10) The grounds in and about a landfill shall not be allowed to become a nuisance.

(a) ~~If~~ when necessary, interior fences may be required to prevent litter from blowing from the landfill.

(b) The permitted area shall be policed on a routine basis to collect all scattered material.

(11) All litter attributable to the site's operation shall be picked

up within forty-eight (48) hours.

(12) Unless excluded from the site, large bulky items and other nonresidential wastes shall be deposited in a manner approved by the cabinet pursuant to KRS 224.10-100.

(13) The owner or operator shall conform to the posted operating hours for receiving waste and shall notify the cabinet of the operating hours before changing them. The entrance sign shall meet the requirements of Section 14(2) of this administrative regulation.

Section 11[40]. Employee Facilities. (1) The owner or operator of a contained landfill shall provide buildings meeting ~~Section 9 of~~ 401 KAR 48:070, Section 9 requirements for site personnel.

(2) The buildings shall be maintained in a safe and sanitary manner.

(3) At least one (1) building shall have a safe drinking water supply.

Section 12[44]. Reports and Recordkeeping. Records and reports shall be maintained and submitted in accordance with ~~Section 8 of~~ 401 KAR 47:190, Section 8.

Section 13[42]. Groundwater Monitoring. The owner or operator of a contained solid waste landfill shall implement the groundwater monitoring program in the approved application.

Section 14[43]. Closure and Closure Care Requirements. (1) The owner or operator shall comply with ~~these~~ the following closure requirements established in paragraphs (a) and (b) of this subsection.

(a) The owner ~~or~~ operator of a contained landfill shall prepare a written closure plan that describes the closure activities for each unit including ~~the following~~:

1.a. The methods to be employed to maintain the integrity and effectiveness of any final cap, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cap; and;

b. The layer addressed in ~~Section 8(4) of~~ 401 KAR 48:080, Section 8(4) shall have a maximum permeability less than or equal to the permeability of any bottom liner system or natural subsoils present;

2. Maintenance and operation of the leachate collection system in accordance with the requirements, if applicable, until leachate no longer is generated;

3. Groundwater monitoring in accordance with the requirements of 401 KAR 48:300 and maintaining the groundwater monitoring system; and

4. Maintenance and operation of the explosive gas monitoring system in accordance with the requirements of Section 5[4] of this administrative regulation.

(b) The closure period shall be at least two (2) years following the cabinet's acceptance of the owner's ~~owners~~ certification of closure.

(2) The owner or operator of a contained landfill shall prepare and implement a written closure care plan that describes monitoring and routine maintenance activities that shall be carried out during the closure care period of at least thirty (30) years. The closure care plan shall include, at a minimum, ~~the following information~~:

(a) A description of the monitoring and maintenance activities for each unit and the frequency at which these activities shall be performed;

(b) The name, address, and telephone number of the person or office to contact about the facility during the closure care period; and

(c) A description of the planned uses of the property during the closure care period.

1. Closure care use of the property shall ~~not be allowed to~~ disturb the integrity of the final cap, liner or liners ~~liner(s)~~, or any other components of the containment system, or the function of the monitoring systems, unless upon demonstration by the owner or operator, the cabinet determines that the activities shall not



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increase the potential threat to human health or the environment or the disturbance is necessary to reduce a threat to human health or the environment.

2. The owner or operator shall obtain approval from the cabinet in order to remove any wastes or waste residues, the liner, or contaminated soils from the land.

(3) The closure care plan shall be submitted with the permit application and shall be approved by the cabinet pursuant to KRS 224.10-100.

(a) Any subsequent modification to the closure care plan also shall be approved[proved] by the cabinet.

(b) A copy of the most recently approved closure care plan shall be kept at the facility at least until completion of the closure care period has been certified in accordance with subsection (5) of this section.

(4)(a) The owner or operator shall record a notice in the deed that shall in perpetuity notify any potential purchaser of the property of the location and time of operation of the facility, the nature of the waste placed in the site, and a caution against future disturbance of the area.

(b) The[Such] notice shall be recorded in accordance with KRS Chapter 382, and proof of recording shall be submitted to the cabinet prior to the cabinet's acceptance of certification of closure.

(5) Following completion of all closure and closure care periods for each unit, the owner or operator of a contained landfill shall submit to the cabinet certification by a professional engineer, verifying that all phases of closure and closure care have been completed in accordance with the approved plans and the requirements of KRS Chapter 224.

Section 15[14]. Signs. (1) Warning signs shall be visible at all landfill access points.

(a) The warning signs shall be legible[readable] at a distance of 100 feet.

(b) The signs shall give warnings of all site hazards that might include[including but not limited to]: explosive gases, heavy equipment movement, and heavy truck movements.

(2) Entrance signs shall be visible, located at the public entrances and all entrances used by waste hauling vehicles.

(a) The signs shall be legible[readable] from 100 feet.

(b) The signs[They] shall indicate landfill name, name of the owner, name of the operator, the hours of receiving wastes, the permit number, and an emergency telephone number.

Section 16[15]. Alternative Specifications. Alternative specifications may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer that the alternatives[they] shall result in performance, with regard to safety, stability and environmental protection, equal to or better than that resulting from designs complying with the requirements[specifications] of this administrative regulation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at 11 a.m.

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-6538, fax (502) 564-4245, email [Louanna.Aldridge@ky.gov](mailto:Louanna.Aldridge@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for contained landfills.

(b) The necessity of this administrative regulation: KRS Chapter 224 requires the cabinet to promulgate administrative regulations for the management, processing, or disposal of solid wastes. KRS 224.40-305 requires owners or operators of solid waste sites or facilities obtain a permit. This administrative

regulation sets forth the requirements for operating a permitted contained landfill.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 224 requires the cabinet to promulgate administrative regulations for the management, processing, or disposal of solid wastes. KRS 224.40-305 requires owners or operators of solid waste sites or facilities obtain a permit. This administrative regulation sets forth the requirements for operating a permitted contained landfill.

(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 statutes by clearly establishing the operating requirements for permitted contained landfills located in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendments to Section 3 of this administrative regulation were made to provide clarification and improve overall consistency with 902 KAR 100:180, Section 6.

(b) The necessity of the amendment to this administrative regulation: The amendments were necessary to ensure the administrative regulation functions as intended and to be responsive to public comments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to Section 3 of this administrative regulation clarifies disposal criteria for TENORM waste disposal from oil and gas development production.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of KRS Chapter 224 by clarifying the proper disposal of TENORM waste generated from oil and gas development activities and ensuring the protection of human health and the environment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all counties, cities, urban-county governments and solid waste management areas in Kentucky. This administrative regulation will also affect any individual, business, or other organization engaging in the management, processing, and disposal of solid waste in Kentucky. Any producer of TENORM waste may potentially impacted by this amendment as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Solid waste sites or facilities accepting TENORM waste for disposal in a permitted contained landfill must meet the operating requirements established in 902 KAR 100:180 and meet the final cap design requirements established in 401 KAR 48:080. The solid wastes sites or facilities must also comply with daily cover of an additional six inches for a total minimum of twelve inches of cover over all exposed waste containing TENORM at the end of each working day or for continuously operating landfills, once every twenty-four hours. The amendment also clarifies the procedures for notifying the proper authorities if waste is disposed or discovered at a facility.

Local governments may be impacted if they own or operate a solid waste facility that accepts TENORM waste under the requirements in this administrative regulation as well as requirements established in 902 KAR 100:180 and 401 KAR 48:080. This amendment may cause counties or solid waste management areas to renegotiate any host agreements they currently have with solid waste sites and facilities wishing to accept TENORM waste subject to administrative regulation.

Producers of TENORM waste will potentially be affected by this amendment since this regulation clarifies the requirements for the management and disposal of TENORM waste in a permitted contained landfill. These requirements may affect the availability of solid waste sites and facilities that accept TENORM waste subject

to 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): the costs to comply with the amendment would only increase for owners and operators of solid waste sites and facilities that choose to accept TENORM waste subject to this administrative regulation. While this cost is unknown, owners and operators would have to take all necessary steps to ensure employee safety, health, and training. Sites and facilities accepting TENORM waste subject to this administrative regulations will also have to ensure the proper equipment is in place for proper management and disposal.

Since counties or solid waste management areas may need to renegotiate the contractual terms of host agreements with solid waste sites and facilities, there is potential for gate fees to increase.

Producers of TENORM waste could potentially see disposal costs increase dependent on the cost and availability of disposal of TENORM waste subject to this administrative regulation in a permitted contained landfill.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment would only affect solid waste sites or facilities that choose to accept TENORM waste subject to this administrative regulation in a permitted contained landfill. If compliant with the requirements established in this administrative regulation, owners and operators would receive a protective benefit from lawsuits and litigation through their solid waste permit.

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

(a) Initially: There will be no substantial cost associated with the implementation of the amendment to this administrative regulation. As a whole, the cost to administer the solid and special waste program is \$2.9 million annually.

(b) On a continuing basis: There will be no substantial cost associated with the implementation of the amendment to this administrative regulation. As a whole, the cost to administer the solid and special waste program is \$2.9 million annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As a whole, the solid waste program utilizes a combination of general and restricted funds in the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? This administrative regulation does not apply tiering as it applies to all persons engaging in the management, processing, and disposal of solid waste.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 all counties, cities, urban-county governments and solid waste management areas responsible for solid waste management in the Commonwealth of Kentucky by establishing the requirements for the disposal of TENORM waste in a permitted contained landfill.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation. KRS 224.10-100, 224.40-110, 224.40-305, 224.43-340, 224.50-824, 224.50-832, and 40 C.F.R. Part 258.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 of this administrative regulation would only generate revenue for local government agencies that own or operate solid waste sites or facilities that choose to accept TENORM waste to be managed and disposed of in a permitted contain landfill.

(b) How 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 of this administrative regulation would only generate revenue for local government agencies that own or operate solid waste sites or facilities that choose to accept TENORM waste to be managed and disposed of in a permitted contain landfill.

(c) How much will it cost to administer this program for the first year? It will cost approximately \$2.9 million to operate the entire solid waste program in the first year.

(d) How much will it cost to administer this program for subsequent years? It will cost approximately \$2.9 million to operate the entire solid waste program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The amendment to this administrative regulation will likely have a minimal fiscal impact. The amendment would only have a fiscal impact for solid waste sites and facilities that choose to accept TENORM waste to be disposed of in a permitted contained landfill. Solid waste sites and facilities accepting TENORM waste would have additional operating costs to meet the requirements established in this administrative regulation. However, with clear requirements for the disposal of TENORM waste, the acceptance of TENORM waste subject to this administrative regulation could result in an increase revenue stream for solid waste sites and facilities.

**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Permits  
(Amended After Comments)**

**405 KAR 7:001. Definitions for 405 KAR Chapter 7.**

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS[Chapter 13A,] 350.028, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350[in pertinent part] requires the cabinet to promulgate[rules and] administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation establishes definitions for[provides for the defining of certain essential] terms used in 405 KAR Chapter 7.

Section 1. Definitions. (1) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(2) "Administrative hearing" means a formal adjudicatory hearing conducted pursuant to 400 KAR 1:090 and 400 KAR 1:110[405 KAR 7:091 and 405 KAR 7:092] before the cabinet.

(3) "Administratively complete application" means an

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application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.

(4) "Affected area" means any land or water area that[which] is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(6) "Application" means the documents and other information filed with the cabinet seeking issuance of permits,<sup>[:]</sup> revisions,<sup>[:]</sup> amendments,<sup>[:]</sup> renewals,<sup>[:]</sup> and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(7) "Approximate original contour" is defined by[is] KRS 350.010.

(8) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(9) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and includes[shall also include] all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(10) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(11) "Cabinet" is defined by[is] KRS 350.010.

(12) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(13) "C.F.R." means Code of Federal Regulations.

(14) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(15) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity could[may] cause any disturbance of the land surface or could[may] cause any appreciable effect upon land, air, water, or other environmental resources.

(16) "Coal mine waste" means coal processing waste and underground development waste.

(17) "Coal processing waste" means materials [which are] separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(18) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and[which is] supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(19) "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured.

(20) "Cumulative production" means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total shall be governed by~~[Section 7 of]~~ 405 KAR 7:035, Section 7.

(21) "Cumulative revenue" means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

(22) "Day" means calendar day unless otherwise specified to be a working day.

(23) "Department" means the Department for Natural Resources.

(24) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(25) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(26) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.

(27) "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line, or similar construction, or within the boundaries of the area directly affected by other types of government-financed construction, could[may] be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(28) "Final order" means final order of the secretary, which could[may] include findings of fact, conclusions of law, and an order.

(29) "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but does[shall] not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(30) "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a cabinet, department, agency, or office of the unit that[which], directly or through another unit of government, finances construction.

(31) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that the materials[they] are considered water saturated.

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(32) "Hearing officer" means the individual duly qualified and assigned as presiding officer to conduct administrative hearings; the term includes the chief hearing officer.

(33) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(34) "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or
2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland".

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(35) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(36) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(37) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(38) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(39) "Individual" ~~as used in 405 KAR 7:091 and 7:092;~~ means a natural person.

(40) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities; or

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(41) "Initiating document" means a petition for administrative hearing, an administrative complaint, a show cause order, or any other document that commences an administrative proceeding.

(42) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes ~~but is not limited to,~~ in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and

fluid recovery mining.

(43) "Interim report" means statements made by a hearing officer in written form that are not intended to be considered by the secretary and that are not subject to judicial review.

(44) "KAR" means Kentucky administrative regulations.

(45) "Knowingly" means that a person knew or had reason to know in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that the act or omission constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

(46) "KRS" means Kentucky Revised Statutes.

(47) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(48) "Mining area", as used in 405 KAR 7:035, means an individual excavation site or pit from which coal, other minerals, and overburden are removed.

(49) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(50) "MSHA" means Mine Safety and Health Administration.

(51) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet that establishes with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions that the authorized representative of the cabinet determines to have occurred based upon an inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(52) "Office", as used in 405 KAR 7:091 and 7:092, means the office of administrative hearings.

(53) "Operations" is defined by KRS 350.010.

(54) "Operator" is defined by KRS 350.010.

(55) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval that:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(56) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(57) "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(58) "Overburden" is defined by KRS 350.010.

(59) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(60) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(61) "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application,

required to be covered by the permittee's performance bond under 405 KAR Chapter 10 and which includes the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, may be excluded from the permit area~~the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit].~~

(62) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(63) "Person" is defined by~~in~~ KRS 350.010.

(64) "Prime farmland" means those lands~~which are~~ defined by the Secretary of Agriculture in 7 C.F.R. 657 and ~~that~~~~which~~ have been "historically used for cropland"~~as that phrase is defined above~~.

(65) "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(66) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations ~~that could~~~~which may~~ reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area, shadow area, and adjacent areas.

(67) "Reclamation" is defined by~~in~~ KRS 350.010.

(68) "Record" means the transcript of a proceeding, if any, and rulings; and all pleadings, motions, and rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon, proposed findings and recommended orders; and legal briefs and orders.

(69) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(70) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(71) "SCS" means Soil Conservation Service.

(72) "Secretary" is defined by~~in~~ KRS 350.010.

(73) "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression ~~that~~~~which~~ slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(74) "Shadow area" means the surface area overlying underground mine works and surface areas~~disturbances~~ associated with auger and in situ mining.

(75) "Significant, imminent environmental harm" means an

adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists ~~that~~~~which~~:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

~~(76)~~~~(75)~~ "Small operator", as used in 405 KAR 7:080, means an operator whose combined actual and attributed production of coal does not exceed 300,000 tons during any period of twelve (12) consecutive months.

~~(77)~~~~(76)~~ "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

~~(78)~~~~(77)~~ "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest~~;~~~~]~~

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties~~;~~~~]~~

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons~~;~~~~]~~

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

~~(79)~~~~(78)~~ "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

~~(80)~~~~(79)~~ "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

~~(81)~~~~(80)~~ "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including~~;~~~~but not limited to,~~ the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.

~~(82)~~~~(81)~~ "Surface coal mining and reclamation operations" is defined by~~in~~ KRS 350.010.

~~(83)~~~~(82)~~ "Surface coal mining operations" is defined by~~in~~ KRS 350.010.

~~(84)~~~~(83)~~ "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

~~(85)~~~~(84)~~ "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

~~(86)~~~~(85)~~ "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

~~(87)~~~~(86)~~ "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the

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right to conduct surface coal mining operations under a permit issued by the cabinet.

(88)(87) "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(89)(88) "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence, or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions.

(90)(89) "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 7

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms to be used in 405 KAR Chapter 7.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 7.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 7 and will assist in the accurate interpretation of those administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendment made in response to comment was to correct an error in the definition of "Shadow area". The previous definition included surface disturbances which under the amendments made by HB 234 were not meant to be permitted.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the

administrative regulations in Chapter 7. The amendment in response to comment was necessary to correctly define the term.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying terms to be used in 405 KAR Chapter 7. The amendment in response to comment was necessary to clearly define the term and to correct an error made in the original proposed administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendment made in response to comment was necessary to clearly define the term by correcting an error in the originally filed administrative regulation. A correctly defined term will comply with the intent of the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine 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: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this proposal. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 707.5, 730

2. State Compliance Standards. KRS 350.028, 350.465.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 707.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of Federal Regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

**ENERGY AND ENVIRONMENT CABINET**  
**Department for Natural Resources**  
**Division of Mine Permits**  
**(Amended After Comments)**

**405 KAR 8:001. Definitions for 405 KAR Chapter 8.**

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS 350.028(1), (5), 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 730-733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) and (5) and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation defines terms used in 405 KAR Chapter 8.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials that[which], if exposed to air,

water, or weathering processes, form acids that could[may] create acid drainage.

(3) "Acquisition" means purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease, or option, the conduct of surface coal mining and reclamation operations.

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(5) "Administratively complete application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.

(6) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(7) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(8) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(9) "Approximate original contour" is defined in KRS 350.010.

(10) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(11) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(12) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife,

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and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(13) "Cabinet" is defined in KRS 350.010.

(14) "Cemetery" means any area where human bodies are interred.

(15) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(16) "C.F.R." means Code of Federal Regulations.

(17) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(18) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(19) "Coal mine waste" means coal processing waste and underground development waste.

(20) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(21) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(22) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(23) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(24) "Community or institutional building" means a structure, other than a public building or occupied dwelling, that is used:

(a) For meetings, gatherings, or functions of:

1. A local civic organization; or

2. Other community group;

(b) As a facility for the following purposes:

1. Educational;

2. Cultural;

3. Historic;

4. Religious;

5. Scientific; or

6. Correctional;

(c) As a mental or physical health care facility;

(d) To supply water;

(e) To generate power;

(f) To treat sewage; or

(g) For another public service.

(25) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(26) "Complete and accurate application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and 405 KAR Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval may be issued.

(27) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(28) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(29) "Day" means calendar day unless otherwise specified to be a working day.

(30) "Department" means the Department for Natural Resources.

(31) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(32) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(33) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(34) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(35) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(36) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(37) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.

(38) "Federal lands" means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(39) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products.

(40) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(41) "General area" means, with respect to hydrology, the topographic and groundwater basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and groundwater systems in the basins.



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(42) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(43) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(44) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(45) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(46) "Historically used for cropland" means land that:

(a) Has been used for cropland for any of five (5) years or more of the ten (10) years immediately preceding the:

1. Application; or
2. Acquisition of the land for the purpose of conducting a surface coal mining and reclamation operation;

(b) Would likely have been used for cropland for any five (5) of the ten (10) years immediately preceding the acquisition or application, but for some fact of ownership or control of the land unrelated to the productivity of the land;

(c) Falls outside the five (5) of ten (10) years criteria, but the cabinet determines is clearly cropland on the basis of additional cropland history of:

1. Surrounding land; and
2. The land under consideration.

(47) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(48) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(49) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(50) "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material.

(51) "Impoundment" means a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built.

(52) "Incidental boundary revision" means an extension to a permit area or shadow area that is necessary for reasons unforeseen when the original permit application was prepared and that is small in relation to the original or amended permit area or shadow area.

(53) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(54) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of

coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(55) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(56) "Irreparable damage to the environment" means any damage to the environment, in violation of SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24, that cannot be corrected by actions of the applicant.

(57) "KAR" means Kentucky administrative regulations.

(58) "KRS" means Kentucky Revised Statutes.

(59) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(60) "Material damage", as used in 405 KAR 8:040, Section 26 means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its presubsidence condition.

(61) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(62) "MRP" means mining and reclamation plan.

(63) "MSHA" means Mine Safety and Health Administration.

(64) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

(65) "Noncommercial building" means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

(66) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(67) "Notice of violation" means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication. This shall include a notice of noncompliance and order for remedial measures.

(68) "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(69) "Occupied residential dwelling and structures related thereto" means, for purposes of 405 KAR 8:040, Section 26, and 405 KAR 18:210, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of these structures include, but are not limited to, garages; storage sheds and barns;

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greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

(70) "Operations" is defined in KRS 350.010.

(71) "Operator" is defined in KRS 350.010.

(72) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(73) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(74) "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(75) "Overburden" is defined in KRS 350.010.

(76) "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships specified in paragraphs (a) and (b) of this subsection:

(a)1. Being a permittee of a surface coal mining operation;

2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or

3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;

2. Being the operator of a surface coal mining operation;

3. Having the ability to commit the financial or real property assets or working resources of an entity;

4. Being a general partner in a partnership;

5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(77) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(78) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(79) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(80) "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(81) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(82) "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond under 405 KAR Chapter 10 and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, may be excluded from the permit area. [the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.]

(83) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(84) "Person" is defined in KRS 350.010.

(85) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(86) "Previously mined area" means land that was affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title.

(87) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 C.F.R. 657 and which have been "historically used for cropland" as that phrase is defined above.

(88) "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(89) "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(90) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area, shadow area, and adjacent areas.

(91) "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area and shadow area.

(92) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(93) "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.

(94) "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(95) "Public park" means an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, despite whether the use is limited to certain times or days. It includes any land leased, reserved, or held open to the public because of that use.

(96) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(97) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate

and reach the zone of saturation.

(98) "Reclamation" is defined in KRS 350.010.

(99) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(100) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(101) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(102) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(103) "Renewable resource lands."

(a) As used in 405 KAR Chapter 24, "renewable resource lands" means geographic areas which contribute significantly to the long-range productivity of water supplies or of food or fiber products, these lands to include aquifers and aquifer recharge areas.

(b) As used in 405 KAR 8:040, Section 26, "renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(104) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(105) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(106) "SCS" means Soil Conservation Service.

(107) "Secretary" is defined in KRS 350.010.

(108) "Sedimentation pond" means a primary sediment control structure:

(a) Designed, constructed, or maintained pursuant to 405 KAR 16:090 or 405 KAR 18:090;

(b) That may include a barrier, dam, or excavated depression to:

1. Slow water runoff; and
2. Allow suspended solids to settle out; and

(c) That shall not include secondary sedimentation control structures, including a straw dike, riprap, check dam, mulch, dugout, or other measure that reduces overland flow velocity, reduces runoff volume, or trap sediment, to the extent that the secondary sedimentation structure drains into a sedimentation pond.

(109) "Shadow area" means the surface area overlying underground mine works and surface areas disturbances associated with auger and in situ mining.

(110) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or
2. May reasonably be expected to cause environmental harm

at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately repairable.

(111)[(440)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(112)[(444)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(113)[(442)] "Small operator", as used in 405 KAR 8:030, Section 3(5) and 405 KAR 8:040, Section 3(5), is defined at KRS 350.450(4)(c).

(114)[(443)] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(115)[(444)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(116)[(445)] "Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets the soils for use. Soil surveys shall meet the standards of the National Cooperative Soil Survey.

(117)[(446)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(118)[(447)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(119)[(448)] "Steep slope" means any slope of more than twenty (20) degrees.

(120)[(449)](a) "Substantial legal and financial commitments" means significant investments, that have been made on the basis of a long-term coal contract, consisting of actual expenditures of substantial monies or execution of valid and binding contracts involving substantial monies for such things as power plants; railroads; coal handling, preparation, extraction, and storage facilities; and other capital-intensive activities such as:

1. Improvement or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations in the petitioned area;

2. Acquisition of capital equipment for use in, for access to, or for use in support of surface coal mining and reclamation operations in the petitioned area; and

3. Exploration, mapping, surveying, and geological work, as well as expenditures of engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations in the petitioned area.

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(b) The costs of acquiring the coal in place or the right to mine such coal are not sufficient to constitute a substantial legal and financial commitment in the absence of other investments as described in paragraph (a) of this subsection.

(121)[(120)] "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other activities, or to remove more than twenty-five (25) tons of coal.

(122)[(124)] "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(123)[(122)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(124)[(123)] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(125)[(124)] "Surface coal mining operations" is defined in KRS 350.010.

(126)[(125)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(127)[(126)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

(128)[(127)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(129)[(128)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(130)[(129)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(131)[(130)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(132)[(134)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(133)[(132)] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(134)[(133)] "TRM" means Technical Reclamation Memorandum.

(135)[(134)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(136)[(135)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(137)[(136)] "USDA" means United States Department of Agriculture.

(138)[(137)] "U.S. EPA" means United States Environmental Protection Agency (133) "USGS" means United States Geological Survey.

(139)[(138)] "USGS" means United States Geological Survey.

(140)[(139)] "Valid existing rights" means:

(a) Except for haul roads, property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on the lands either:

1. Had been validly issued or had made a good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct surface coal mining operations on those lands, application for the permits being deemed to constitute good faith efforts to obtain the permits; or

2. Can demonstrate to the cabinet that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

(b) For haul roads:

1. A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

2. Any other road in existence as of August 3, 1977.

(c) Valid existing rights does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining.

(141)[(140)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(142)[(144)] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(143)[(142)] "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24. ~~[Section 2. Incorporation by Reference. (1) "ASTM Standard D 388-77, Standard Specification for Classification of Coals by Rank", (1977), American Society for Testing and Materials, is incorporated by reference.~~

~~(2) It may be inspected, copied, or obtained at the Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 8.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms to be used in 405 KAR Chapter 8.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 8 and will assist in the accurate interpretation of those administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendment made in response to comment was to correct an error in the definition of "Shadow area". The previous definition included surface disturbances which under the amendments made by HB 234 were not meant to be permitted.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulation. The amendment in response to comment was necessary to correctly define the term.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying terms to be used in 405 KAR Chapter 8. The amendment in response to comment was necessary to clearly define the term and to correct an error made in the original proposed administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendment made in response to comment was necessary to clearly define the term by correcting an error in the originally filed administrative regulation. A correctly defined term will comply with the intent of the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine 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: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this proposal. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department with

implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028(1), (5), 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 730-733, 735, 917, 30 U.S.C. 1253, 1255.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures(+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 701.5

2. State Compliance Standards. KRS 350.028 and 350.465

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 701.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of Federal Regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Permits  
(Amended After Comments)**

**405 KAR 8:010. General provisions for permits.**

RELATES TO: KRS 61.870-61.884, 146.200-146.360, 322.010(3), 322.340, 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 350.500-350.521, 424.110-424.120, 27 C.F.R. 555.206, 555.218, 555.219, 555.220, 30 C.F.R. 77.1301(c), 730-733, 735, 775, 777, 778.17, 870, 917, 16 U.S.C. 470aa-mm, 470x-6, 661-667e16, 668-668d, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 350.515, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 661-667e16, 668a, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 and 350.465 require the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation establishes provisions for permits to conduct these operations, including when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits.

Section 1. Applicability. Excluding coal exploration operations, this administrative regulation shall apply to applications, actions regarding permits, and surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. A person shall not engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit pursuant to 405 KAR Chapter 8[for the area to be affected by the operations].

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations or underground only operations shall file a complete and accurate application for a permanent program permit that shall comply fully with applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operations until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit pursuant to Section 21 of this administrative regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted pursuant to prior permanent program permits.

1. An application for the transfer, sale, or assignment of rights granted pursuant to a permit may be submitted.

2. The actual transfer, sale, or assignment of permit rights shall not take place until written permission has been granted by the cabinet.

(e) Amendment of permanent program permits. A permittee may apply for an amendment to a permit pursuant to Section 23 of this administrative regulation, but shall not begin surface coal

mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. A person engaging in surface coal mining and reclamation operations pursuant to a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet and the applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544); the Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. 661-667d); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470-470x-6); and the Bald Eagle Protection Act of 1940, as amended (16 U.S.C. 668-668d), as required by 30 C.F.R. 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as established in Section 8(6) and (7) of this administrative regulation and, if necessary, by any other measures the cabinet and interested parties deem appropriate.

Section 4. Preliminary Requirements. (1) A person desiring a permit ~~may~~shall submit to the cabinet a Preliminary Application, MPA-00.

(2) If the permittee chooses to submit a Preliminary Application, the Preliminary Application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area, shadow area, and adjacent areas; and the areas of land to be affected, including, for example, locations of the coal seam or seams to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds.

(a) Areas delineated on the map shall be physically marked at the site; and

(b) Pursuant to KRS Chapter 350 and 405 KAR Chapters 7 – 24, personnel of the cabinet shall conduct, within fifteen (15) working days after the filing of the Preliminary Application, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state, or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form, and content required by the cabinet, in accordance with KRS 350.060(5) and (6), including a copy to be filed for public inspection under Section 8(8) of this administrative regulation.

(b) The application and copies shall be prepared, assembled, and submitted with attachments, plans, maps, certifications, drawings, calculations, or other documentation necessary for the cabinet to review the proposed surface coal mining and reclamation operations.

(c) The following forms shall be submitted by an applicant:

1. ~~Preliminary Application~~, MPA-00;
2. ~~Permittee Information for a Mining Permit~~, MPA-01;
2. ~~3.~~ Operator Information for a Mining Permit, MPA-02;
3. ~~4.~~ Technical Information for Mining Permit, MPA-03;
4. ~~5.~~ Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B.;
5. ~~6.~~ Disinterested Third Party Affidavit: Lands Historically Used for Cropland, MPA-03.20.1.C.;

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~~6.[7-]~~ Update of Permittee or Operator Information, MPA-05;  
~~7.[8-]~~ Change of Corporate Owners, Officers or Directors, MPA-06;

~~8.[9-]~~ Application to Transfer a Mining Permit, MPA-07;

~~9.[10-]~~ Revision Application to Change Operator, MPA-08;

~~10.[11-]~~ Application for Renewal of a Mining Permit, MPA-09;

~~11.[12-]~~ Application for a Coal Marketing Deferral, MPA-10;  
and

~~12.[13-]~~ Minor Field Revision Application Form, SME 80.

(d) The application shall be complete with respect to all information required by KAR Title 405 and include, at a minimum for:

1. Surface mining activities, all the applicable information required pursuant to 405 KAR 8:030;

2. Underground mining activities, all the information required pursuant to 405 KAR 8:040; and

3. Special types of surface coal mining and reclamation operations, all the information required pursuant to 405 KAR 8:050.

(e) An application shall not be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information established in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations that collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address, and position of officials of each private or academic research organization or governmental agency that provided information that has been made a part of the application regarding land uses; soils; geology; vegetation; fish and wildlife; water quantity and quality; air quality; and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or some other person who will serve as agent for service of notices and orders.

1. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number.

2. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may authorize a person to submit application modifications to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If information marked on the preliminary map required pursuant to Section 4 of this administrative regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this administrative regulation.

(b)1. Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series.

2. Maps of the permit area, shadow area, and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map.

3. A map of scale larger than 400 feet to the inch shall be provided by the applicant if the larger scaled map is needed to adequately show mine site details.

4. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) If a map or drawing is required to be certified by a qualified professional engineer, as defined by KRS 322.010(3), the map or drawing shall bear the seal and signature of the engineer as required by KRS 322.340, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with an application shall be prepared by or under the direction of a qualified professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS 322.340 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by the fees established in this administrative regulation. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing the permit.

(2) An applicant shall submit an application fee of \$2,500 for an original application or \$1,750 for an amendment.

(3) An applicant shall also submit an additional seventy-five (75) dollars for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. An acreage fee shall not be required for surface areas overlying underground or auger workings that will not be affected by surface operations and facilities.

(4) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. A permit application shall not be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation as established in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the:

1. Application is submitted to the cabinet; or

2. Applicant receives the notification from the cabinet pursuant to Section 13(2) of this administrative regulation that the application has been deemed administratively complete and ready for technical review.

(b) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(c) The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application shall be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices,

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in accordance with this section that shall consist of an affidavit from the publishing newspaper certifying the dates, place, and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be as established in subsection (5) of this section.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant;

(b) A map or description that shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey 7.5 minute quadrangle map that contains the area shown or described; and

4. Show the north arrow and map scale, if a map is used.

(c) The location where a copy of the application is available for public inspection pursuant to subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted pursuant to Sections 9, 10, and 11 of this administrative regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except if public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) A statement, if the application includes a request for an experimental practice pursuant to 405 KAR 7:060, indicating that an experimental practice is requested that identifies the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted pursuant to Section 9 of this administrative regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including:

1. Planning agencies;

2. Sewage or water treatment authorities; and

3. Water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas;

(b) All federal and Kentucky governmental agencies that have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and that are a part of the permit coordination process required by Section 3 of this administrative regulation; and

(c) Those agencies with an interest in the particular proposed operation including:

1. The USDA Soil Conservation Service State Conservationist;

2. The local U.S. Army Corps of Engineers district engineer;

3. The National Park Service;

4. Kentucky and federal fish and wildlife agencies; and

5. The state historic preservation officer.

(8) In accordance with Section 12 of this administrative regulation, the cabinet shall, upon receipt of the application:

(a) Make the application available for public inspection and copying during all normal working hours at the appropriate regional

office of the cabinet where the mining has been proposed; and

(b) Provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided pursuant to Section 8(6) and (7) of this administrative regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this administrative regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection pursuant to Section 8(8) of this administrative regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this administrative regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection pursuant to Section 8(8) of this administrative regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the person requesting at the conference;

(b) State if the person requesting desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant pursuant to Section 8(1) of this administrative regulation.

(2) If a permit conference has been requested in accordance with subsection (1) of this section, then the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section.

(3) The conference shall be conducted according to the following:

(a) If requested pursuant to subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, pursuant to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a person requesting the conference in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior



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to the established date of the conference for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:091 and 7:092 shall not apply to the conduct of the conference.

1. The conference shall be conducted by a representative of the cabinet, who shall accept oral or written statements and any other relevant information from any party to the conference.

2. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties.

3. The record shall be maintained and accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(4) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference shall not be held.

(5) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required pursuant to 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.

(a) The cabinet shall make an application for a permit, revision, amendment, or renewal of a permit or an application for transfer, assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application shall be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure pursuant to subsection (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office upon the changes being submitted to the Division of Mine Permits.

(2) Information pertaining to coal seams, test borings, core samples, and soil samples in applications shall be made available for inspection and copying to any person with an interest that is or may be adversely affected.

(3) Confidentiality.

(a) The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information.

(b) Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application.

(c) If a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:092, Section 9.

(d) Confidential information shall be limited to the following:

1. Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal that are potentially toxic in the environment; and

2. Information on the nature and location of archaeological resources on public land and Indian land as required pursuant to the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa - mm.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this administrative regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall

have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination.

1. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application.

2. If the application is incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies that render the application incomplete.

3. The applicant shall submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness.

4. If, after ten (10) working days, the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods established in Section 16 of this administrative regulation, the cabinet shall either notify the applicant:

(a) Of the cabinet's decision to issue or deny the application; or

(b) In writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) The cabinet shall not issue a permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955, KRS Chapter 350 and 405 KAR Chapters 7 - 24, any other state's laws or administrative regulations pursuant to SMCRA, or any other law, rule, or administrative regulation referred to in this subsection. The denial of the permit shall be based on available information concerning:

1. Failure-to-abate cessation orders issued by OSM, Kentucky, or any other state;

2. Unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state;

3. Delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and 405 KAR Chapters 7 - 24, or any other state's laws or administrative regulations pursuant to SMCRA;

4. Bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected;

5. Delinquent abandoned mine reclamation fees; and

6. Unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

(b) In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and administrative regulations pursuant to SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except if evidence to the contrary is established in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(c) If a current violation exists, the cabinet shall require the

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applicant or person who owns or controls the applicant, before issuance of the permit, to either:

1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required pursuant to subparagraph 1 of this paragraph.

(d) Any permit that is issued on the basis of proof submitted pursuant to paragraph (a)1 of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (a)2 of this subsection, shall be conditionally issued.

(e) If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and 405 KAR Chapters 7 - 24 of a nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or administrative regulations, a permit shall not be issued. Before a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:092, Section 8.

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

Section 14. Criteria for Application Approval or Denial. An application for a permit, revision (as applicable), or amendment of a permit shall not be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information established in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24;

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished in accordance with the mining and reclamation plan contained in the application;

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed pursuant to the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area and shadow area;

(4) The proposed permit area or shadow area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5);

(5)(a) The proposed operations will not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that no additional protection measures are necessary;

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required pursuant to 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2);

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this administrative regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this administrative regulation;

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 C.F.R. 870, or has entered into a payment schedule approved by OSM. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule;

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of such a nature and duration and with resulting irreparable damage to the environment as to indicate an intent not to comply with SMCRA or KRS Chapter 350;

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18;

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use;

(12) The applicant may reasonably be expected to submit the performance bond or other equivalent guarantee required pursuant to 405 KAR Chapter 10 prior to the issuance of the permit;

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3;

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining;

(15) The cabinet has made all specific approvals required pursuant to 405 KAR Chapters 16 through 20;

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531-1544);

(17) The applicant has not forfeited any bond pursuant to KRS Chapter 350. If the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land;

(18) The applicant has not had a permit revoked, suspended, or terminated pursuant to KRS Chapter 350. If the applicant has had a permit revoked, suspended, or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her;

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property;

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(20) The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as established in 405 KAR 24:040; or

(21) For a proposed re-mining operation that the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7, or 405 KAR 18:190, Section 5, the applicant has demonstrated that the site of the operation will be a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. An application for a permit, revision, or amendment that proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall not be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information established in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as provided for in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(a), (b), (d), and (e) of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(c) of this administrative regulation of a major revision as provided in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application for a minor revision as provided in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application.

a. The timeframes for review shall be as follows:

(i) Fifteen (15) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation; and

(ii) Thirty (30) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation for minor revisions that require full cost bonding calculations.

b. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the fifteen (15) or thirty (30) working day period available to the department.

(b) If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time periods established in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit

application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county and the chief executive officer of any municipality in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The regional office manager of the Division of Mine Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet decides to approve the application, it shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet, pursuant to KRS 350.060(1)(a), only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions pursuant to KRS 350.060(16) of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall have commenced surface mining operations if construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet pursuant to this subsection shall be specifically established in the permit, and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this administrative regulation; 405 KAR 7:060, Section 3; 405 KAR 8:050, Sections 4, 6, and 7; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall constitute knowledge and acceptance of the conditions established in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter if the conditions have or have not been established in the permit.

(1) General. The following general conditions shall apply to a permit issued by the cabinet:

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24;

(b) The permittee shall conduct all surface coal mining and reclamation operations as established in the approved application, except to the extent that the cabinet otherwise directs in the permit that specific actions be taken; and

(c) The permittee shall conduct surface coal mining and

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reclamation operations only on those lands specifically designated as the permit area on the maps submitted pursuant to 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit, and that are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection if the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including:

1. Accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and that prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures established in the permit as necessary to prevent significant, imminent environmental harm that may affect the health or safety of the public; and

2. Utilizing any methods established in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 C.F.R. 870 for coal produced pursuant to the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted pursuant to the permit or after an order for cessation and immediate compliance is issued pursuant to 405 KAR 12:020, Section 3, for operations conducted pursuant to the permit, except if a stay of the order is granted and remains in effect, the permittee shall either notify the cabinet in writing that there has not been a change since the immediately preceding submittal of the information or submit to the cabinet the following information, current to the date the order was issued:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee pursuant to 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued pursuant to 405 KAR Chapter 8 during the term of the permit.

1. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7.

2. Issued permits shall be reevaluated in accordance with the

terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) The cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:092, Section 8.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations established in the existing application and approved pursuant to the current permit;

(b) If a revision is required by an order issued pursuant to Section 19(4) of this administrative regulation;

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required pursuant to 405 KAR Chapters 7 through 24.

(2) Major revisions.

(a) Except as provided in subsections (3)(f) and (6) of this section, a revision shall be deemed a major revision if the proposed change is of a scope and nature that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest that may be adversely affected by the proposed change. Major revisions shall include:

1. A change in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. A variance to approximate original contour requirements;

4. Construction or relocation of a road, if the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. A change that may adversely affect significant fish and wildlife habitats or endangered species;

6. A proposed experimental practice;

7. A change that may cause a major impact on the hydrologic balance;

8. An incidental boundary revision that affects a new watershed; and

9. An incidental boundary revision that includes a diversion of a perennial stream.

(b) A major revision shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this administrative regulation; and shall be submitted on forms prescribed by the cabinet pursuant to KRS Chapter 350 and 405 KAR Chapters 7 - 24. In addition to the requirements of Section 8(5) of this administrative regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) A revision that is not determined by the cabinet under subsection (2) of this section to be a major revision, or that is not an operator change revision under subsection (6) of this section, shall be a minor revision and shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this administrative regulation, except that a minor field revision described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation, and the time frame for review in Section

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16(1)(a)3 of this administrative regulation shall begin at the time of application submittal.

(b) If a proposed minor revision is actually a major revision pursuant to Section 13 of this administrative regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons that could have an interest or may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) A minor field revision shall be reviewed and processed in accordance with this section by the appropriate regional office of the department. The following shall be a minor field revision, unless the number of persons that potentially could have an interest or may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine that the proposed revision is a major revision and it shall not be processed pursuant to this paragraph.

1. Proposals for minor relocation of underground mine entries if:

a. There are no structures or renewable resource lands (pursuant to paragraph (b) of the definition in 405 KAR 8:001(103) of "renewable resource lands") overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

2. A proposal for retention of a concrete platform or a small building if:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure;

3. A proposal to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining pursuant to 405 KAR 24:040, Section 2, regardless of if a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator does not have responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.

4. A proposal to increase the diameter of a culvert used as a road crossdrain, not including a culvert used for a stream crossing, if the proposed culvert is the same type of pipe as the previously approved culvert;

5. A proposal to install an additional culvert used as a road crossdrain (not including a culvert used for a stream crossing), if the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain;

6. A proposal for a minor relocation of an on-bench sediment control structure (dugouts only) in order to locate the structure at a low spot on the same bench on which initially proposed, if:

a. The drainage area to the structure shall remain the same as the original design;

b. The proposed location shall not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary;

7. A proposal to retain diversions of overland flow (not including stream diversions) as permanent facilities if:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversion; and

b. The diversions have previously been designed to the standards for permanent diversions;

8. A proposal for relocation of topsoil storage areas if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

9. A proposal to substitute a plant species if:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted;

10. A proposal to utilize hydroseeding for trees instead of planting trees or tree seedlings if:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. A change in tree species is not involved unless concurrently approved pursuant to subparagraph 9 of this paragraph;

11. A proposal to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed;

12. A proposal to retain small depressions in the reclaimed area;

13. A proposal required by the cabinet to increase frequency of air blast monitoring;

14. A proposal required by the cabinet to increase frequency of air pollution monitoring;

15. A proposal to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls;

16. A proposal to add a portable coal crusher if:

a. The crusher and associated conveying equipment are a completely portable, trailer mounted unit;

b. The equipment shall be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation shall not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment shall always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there shall be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds;

17. A proposal to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated;

18. A proposal to relocate an explosive storage area within the existing permit area in accordance with 27 C.F.R. 555.206, 555.218, 555.219, and 555.220, and 30 C.F.R. 77.1301(c);

19. Approval for minor relocation of a support facility such as a conveyor, hopper, and a coal stockpile if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

20. A proposal for a modification of a shared facility if that modification has already been approved in a revision for one (1) of the permittees by the Division of Mine Permits and no additional performance bond was required for the initial revision;

21. A proposal to add a hopper to a permitted area if:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond;

22. A proposal to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or

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in excess spoil fills or coal mine waste fills;

23. A proposal to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 - 24;

24.a. A proposal for an incidental boundary revision for a minor off-permit disturbance if:

(i) The total acreage of the minor off-permit disturbance is no more than one (1) acre combined per proposal;

(ii) The cumulative acreage limitation in subsection (5) of this section is not exceeded;

(iii) The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish or wildlife, an area that may contain threatened or endangered species, or an area designated as unsuitable for mining pursuant to 405 KAR Chapter 24;

(iv) The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

(v) There is no structure such as an excess spoil disposal fill, a coal mine waste disposal fill or impoundment, or a water impoundment involved;

(vi) The surface owner of the area to be permitted is a surface owner of a disturbed area pursuant to the existing permit; and

(vii) An additional performance bond in the amount of \$5,000 has been filed by the permittee.

b. The regional administrator may decline to review and process a proposal to permit an off-permit disturbance as a minor field revision and instead requires that an application be submitted to the Division of Mine Permits.

25. Except as provided in clauses a. through e. of this subparagraph, a proposal to remove a sedimentation pond previously approved as a permanent impoundment if the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. A proposal to remove a sedimentation pond shall not be processed as a minor field revision if the:

a. Structure has a hazard classification of B or C;

b. Impoundment is a developed water resource land use;

c. Removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. Impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland if no other nearby source of water is available to the livestock); or

e. Impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values;

26. A proposal to approve an exemption from the requirement to pass drainage through a sedimentation pond for a disturbed area that, due to unexpected field conditions, will not drain to an approved sedimentation pond if:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes, and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains a MRP map certified by a professional engineer showing the location of the disturbed area and the drainage area clearly; and

27. A proposal to use the Reclamation Advisory Memorandum #124 reclamation practice on sites where the permittee is required to establish trees and shrubs as part of the approved reclamation plan if there is a letter of consent from the property owner.

(e) Proposed minor revisions that only seek to change the engineering design of impoundments and diversions of overland flow if no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation.

1. Within ten (10) days the cabinet shall process the application and provide a written notice stating the application has been determined to be subject to this paragraph and is being forwarded to technical review.

2. The time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of this notice.

(f) An incidental boundary revision shall be deemed a minor revision if it:

1. Does not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;

2. Is contiguous to the current permit area;

3. Is within the same watershed as the current permit area;

4. Is required for an orderly continuation of the mining operation;

5. Involves mining of the same coal seam or seams as in the current permit;

6. Involves only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;

7. Does not involve a property on which mining is prohibited pursuant to KRS 350.085 and 405 KAR 24:040, unless a waiver has been obtained, or that has been designated as unsuitable for mining pursuant to 405 KAR 24:030, or is a property eligible for listing on the National Register of Historic Places;

8. Does not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;

9. Does not constitute a change in the current method of mining; and

10. Shall be reclaimed in conformity with the current reclamation plan.

(g) Extensions of the underground mining area that are not incidental boundary revisions and do not include planned subsidence or other new proposed surface disturbances shall be minor revisions.

(4) An extension to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved pursuant to this section.

(5) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, an incidental boundary revision for a surface operation and an incidental boundary revision for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area and shall not exceed twenty (20) acres.

(c) Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment, or sale of permit rights.

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(b) A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for approval of the change.

(c) The application shall include:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address, and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through (4) and (8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those administrative regulations shall also apply; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 3(1) through (3) of 405 KAR 8:030 and 8:040, except information pursuant to Section 3(3) pertaining to abated violations shall not be required, and Section 3(5) of those administrative regulations shall also apply.

(d) The application shall be verified under oath by the permittee and the proposed operator in the manner required pursuant to Section 7 of this administrative regulation.

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

1. The advertisement shall be entitled "Notice of Intention to Mine" and shall be as established in Section 8(5) of this administrative regulation.

2. A copy of the advertisement and proof of publication shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication. The advertisement shall include:

a. The permit number;

b. The geographic location of the permit area;

c. The name and business address of the permittee;

d. A statement that the permittee proposes to change the operator approved in the permit;

e. The names and business addresses of the currently approved operator and the proposed operator;

f. The cabinet address to which written comments may be sent pursuant to paragraph (f) of this subsection; and

g. The time available for submission of the comments.

(f) A person whose interests are or may be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

(g) The cabinet shall approve or disapprove the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator pursuant to the criteria in Section 13(4) of this administrative regulation; and

2. Meets the other applicable requirements of KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(h)1. The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its decision to approve or deny the application within fifteen (15) working days after the close of the public comment period pursuant to paragraph (f) of this subsection.

2. A period of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time period established in this paragraph, then the cabinet shall have additional time to issue its decision, but not to

exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(7) Fees. An application for a revision shall include a basic fee except that a minor field revision and an operator change revision shall not have a basic fee.

(a) The fee for a revision shall be \$1,750 for a major revision and \$750 for a minor revision.

(b) If the revision application proposes an incidental boundary revision that would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application. An acreage fee shall not be required for ~~shadow area~~~~[a surface area overlying underground workings]~~ that will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to 405 KAR Chapter 8 shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. An application for renewal of a permit shall be submitted within the time established by Section 2(2)(b) of this administrative regulation. Renewal applications shall be submitted on form MPA-09, Application for Renewal of a Mining Permit, and in accordance with this section, and shall include:

(a) The name and address of the permittee, the term of the renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same pursuant to Section 8 of this administrative regulation;

(c) Evidence that liability insurance pursuant to 405 KAR 10:030, Section 4, shall be provided by the applicant for the proposed period of renewal;

(d) A renewal fee of \$750;

(e) Evidence that the performance bond shall continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional, updated, or revised information required to demonstrate compliance with KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(3) An application for renewal shall be subject to the requirements of Sections 8 through 11, 13, and 16 of this administrative regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this administrative regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established pursuant to Section 17 of this administrative regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards pursuant to KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations shall continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet pursuant to this administrative regulation has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining if to approve or deny a renewal, the burden

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shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, any persons who were parties to any informal conference held on the permit renewal, and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest that is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review established in Section 24 of this administrative regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. A transfer, assignment, or sale of the rights granted pursuant to any permit issued pursuant to KAR Title 405 shall not be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and

4. A processing fee of \$750;

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent pursuant to subsection (3) of this section; and

(c) Obtain sufficient performance bond coverage that shall ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria established in Section 14 of this administrative regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which shall ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred and that is at least equivalent to the bond of the existing permittee; and

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets all requirements necessary to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice established in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities pursuant to the original permit shall pass to the successor upon reissuance of the

permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit pursuant to KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted pursuant to a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. A successor in interest seeking to change the conditions of mining or reclamation operations or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet shall release the prior permittee from bond liability on the permit area if the successor in interest has:

(a) Filed a performance bond satisfactory to the cabinet;

(b) Received written approval of the cabinet for the transfer, sale, or assignment of rights;

(c) Submitted proof of execution of the agreement; and

(d) Assumed the liability pursuant to KAR Title 405 for the reclamation of the areas affected by all prior permittees.

Section 23. Amendments. (1) Except for an incidental boundary revision, an extension to an area covered by a permit shall not be approved, as established in Sections 20 (permit revisions) or 21 (permit renewals) of this administrative regulation.

(a) An extension shall be made by application for another permit.

(b) If the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet shall amend the original permit, if the applicant complies with procedures and requirements applicable to an application for an original permit in accordance with KAR Title 405 amend the original permit, but the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits pursuant to KAR Title 405.

(2) A fee for an amendment to existing permits shall be submitted to the cabinet as established in Section 6(2) of this administrative regulation.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision, or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee, or any person with an interest that may be adversely affected may request a hearing on the reasons for the final decision. The request shall be in accordance with 405 KAR 7:092, Section 8.

(2) Any applicant or any person with an interest that may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to:

(a) Judicial review as provided in KRS 350.0301 and 350.0305 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) An action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits established in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Pursuant to the violation review criteria of the cabinet upon permit issuance:

1. The cabinet should not have issued the permit because of



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an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued;

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) If the permittee was linked to the violation, penalty, or fee through ownership or control, pursuant to the violations review criteria of the regulatory program upon permit issuance an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, pursuant to subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a specified period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit pursuant to subsection (4) of this section.

(4) Rescission procedures. If the cabinet, pursuant to subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission that includes the reasons for the finding of the cabinet pursuant to subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically shall become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet pursuant to subsection (2) of this section was erroneous;

2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations pursuant to the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing. A formal hearing shall be in accordance with 405 KAR 7:092, Section 9.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Preliminary Application", MPA-00, October[August] 2017 [2010];

(b) "Permittee Information for a Mining Permit", MPA-01, August 2010;

(c) "Operator Information for a Mining Permit", MPA-02, August

2010;

(d) "Technical Information for a Mining Permit", MPA-03, October[August] 2017[June 2013];

(e) "Surface Owner's Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.B, November 1991;

(f) "Disinterested Third Party Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.C, November 1991;

(g) "Update of Permittee or Operator Information", MPA-05, August 2010;

(h) "Change of Corporate Owners, Officers or Directors", MPA-06, October 2017[August 2010];

(i) "Application to Transfer a Mining Permit", MPA-07, June 2013;

(j) "Revision Application to Change Operator", MPA-08, August 2010;

(k) "Application for Renewal of a Mining Permit", MPA-09, August 2017[2010];

(l) "Application for a Coal Marketing Deferment", MPA-10, August 2017

(m) "Minor Field Revision Application Form", SME 80, revised August 2010; and

(n)[(m)] "Reclamation Advisory Memorandum #124, Reformation Initiative", March 1997.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions for permits to conduct surface coal mining and reclamation operations and underground only mining operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define provisions for permitting of surface coal mining and reclamation operations and underground only mining operations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350.060(12) directs the cabinet to promulgate administrative regulations related to permitting of operations with surface effects associated with underground mining and other surface coal mining and reclamation operations. This administrative regulation establishes requirements for granting a permit for underground coal mining operations

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for granting a permit for underground coal mining operations.

(2) If 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 makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendment in response to comment was to make minor corrections to forms incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulation as it applies to shadow area. The forms incorporated by reference are necessary for proper implementation of the administrative regulations. The amendments are necessary to address minor issues with the material incorporated by reference.

(c) How the amendment conforms to the content of the

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authorizing statutes: This amendment conforms to the authorizing statutes by clarifying provisions for permitting of surface coal mining and reclamation operations and underground only mining operations. The amendment in response to comment was made to correct minor issues with the forms incorporated by reference. The forms conformed to the authorizing statutes by clarifying the provisions of surface coal mining permitting.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendment made in response to comment will assist in the effective administration of the statutes by correcting the forms incorporated by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine 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: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this proposal. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 350.515, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 661-667e16, 668a, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272.

3. Estimate the effect of this administrative regulation on the

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730, 773-775, 777, 778.17.

2. State Compliance Standards. KRS 350.028 and 350.360.

3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum standards for acquiring a permit prior to performing mining operations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amended After Comments)

#### 405 KAR 16:001. Definitions for 405 KAR Chapter 16.

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917c, 30 U.S.C. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS 350.028(1), (5), 350.465, 30 C.F.R. Parts 730-733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5) and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation defines terms used in 405 KAR Chapter 16.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

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(3) "Acquisition" means purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease, or option, the conduct of surface coal mining and reclamation operations.

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(5) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(6) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(7) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(8) "Approximate original contour" is defined in KRS 350.010.

(9) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(10) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(11) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in

accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(12) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(13) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(14) "Cabinet" is defined in KRS 350.010.

(15) "C.F.R." means Code of Federal Regulations.

(16) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(17) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(18) "Coal mine waste" means coal processing waste and underground development waste.

(19) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(20) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(21) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(22) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(23) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(24) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(25) "Day" means calendar day unless otherwise specified to be a working day.

(26) "dB" means decibels.

(27) "Department" means the Department for Natural Resources.

(28) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(29) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by

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405 KAR Chapter 10 is released.

(30) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(31) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(32) "Durable rock" means rock that:

(a) Does not slake in water;

(b) Is not reasonably expected to degrade to a size or condition that will block, cause failure of, impair, or restrict the effectiveness of the internal drainage system; and

(c) Has been demonstrated to have a slake durability index value of ninety (90) or greater as determined by:

1. The "Method of Determination of Slake Durability Index (Kentucky Method 64-513-79)"; or

2. A test method that yields an equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

(33) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(34) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(35) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(36) "Fish and wildlife land use", as used in 405 KAR 16:210 and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not.

(37) "Forest land" means land used or managed for the long term production of wood, wood fiber, or wood derived products.

(38) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(39) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(40) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(41) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(42) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(43) "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

(44) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(45) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remaining permit area.

(46) "Historically used for cropland" means land that:

(a) Has been used for cropland for any of five (5) years or more of the ten (10) years immediately preceding the:

1. Application; or

2. Acquisition of the land for the purpose of conducting a surface coal mining and reclamation operation;

(b) Would likely have been used for cropland for any five (5) of the ten (10) years immediately preceding the acquisition or application, but for some fact of ownership or control of the land unrelated to the productivity of the land;

(c) Falls outside the five (5) of ten (10) years criteria, but the cabinet determines is clearly cropland on the basis of additional cropland history of:

1. Surrounding land; and

2. The land under consideration.

(47) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(48) "Hz" means hertz.

(49) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350, in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(50) "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material.

(51) "Impoundment" means a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built.

(52) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(53) "In situ process" means:

(a) In situ gasification;

(b) In situ leaching;

(c) Slurry mining;

(d) Solution mining;

(e) Borehole mining;

(f) Fluid recovery mining; or

(g) Another activity conducted on the surface or underground in connection with:

1. In-place distillation;

2. Retorting;

3. Leaching; or

4. Chemical or physical processing of coal.

(54) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(55) "KAR" means Kentucky administrative regulations.

(56) "KPDES" means Kentucky Pollutant Discharge Elimination System.

(57) "KRS" means Kentucky Revised Statutes.

(58) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(59) "Modified highwall" means either:

(a) The highwall resulting from remining where the preexisting highwall face is removed; or

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(b) The highwall resulting from remaining where the preexisting highwall is vertically enlarged.

(60) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(61) "MRP" means mining and reclamation plan.

(62) "MSHA" means Mine Safety and Health Administration.

(63) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

(64) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(65) "Operations" is defined in KRS 350.010.

(66) "Operator" is defined in KRS 350.010.

(67) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(68) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(69) "Other treatment facilities" means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(b) To comply with 405 KAR 16:070.

(70) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(71) "Overburden" is defined in KRS 350.010.

(72) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(73) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(74) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(75) "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(76) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(77) "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond under 405 KAR Chapter 10 and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, may be excluded from the permit area~~[the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit].~~

(78) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(79) "Person" is defined in KRS 350.010.

(80) "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(81) "Previously mined area" means land that was affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title.

(82) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 C.F.R. 657 and which have been "historically used for cropland" as that phrase is defined above.

(83) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area, shadow area, and adjacent areas.

(84) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(85) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(86) "RAM" means Reclamation Advisory Memorandum.

(87) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remaining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all spoil of this nature located in the immediate vicinity of the mining operation.

(88) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(89) "Reclamation" is defined in KRS 350.010.

(90) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(91) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(92) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(93) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(94) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(95) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire

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area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(96) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(97) "SCS" means Soil Conservation Service.

(98) "Sedimentation pond" means a primary sediment control structure:

(a) Designed, constructed, or maintained pursuant to 405 KAR 16:090 or 405 KAR 18:090;

(b) That may include a barrier, dam, or excavated depression to:

1. Slow water runoff; and
2. Allow suspended solids to settle out; and

(c) That shall not include secondary sedimentation control structures, including a straw dike, riprap, check dam, mulch, dugout, or other measure that reduces overland flow velocity, reduces runoff volume, or trap sediment, to the extent that the secondary sedimentation structure drains into a sedimentation pond.

(99) "Shadow area" means the surface area overlying underground mine works and surface **areas[disturbances]** associated with auger and in situ mining.

(100) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or
2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately repairable.

(101)[(100)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(102)[(101)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(103)[(102)] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(104)[(103)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(105)[(104)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(106)[(105)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(107)[(106)] "Steep slope" means any slope of more than twenty (20) degrees.

(108)[(107)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(109)[(108)] "Surface blasting operations":

(a) Means the on-site storage, transportation, and use of explosives in association with:

1. A coal exploration operation;
  2. Surface mining activities; or
  3. A surface disturbance of underground mining activities; and
- (b) Includes the following activities:
1. Design of an individual blast;
  2. Implementation of a blast design;
  3. Initiation of a blast;
  4. Monitoring of an airblast and ground vibration; and
  5. Use of access control, warning and all-clear signals, and similar protective measures.

(110)[(109)] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(111)[(110)] "Surface coal mining operations" is defined in KRS 350.010.

(112)[(111)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(113)[(112)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

(114)[(113)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(115)[(114)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(116)[(115)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(117)[(116)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(118)[(117)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(119)[(118)] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

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~~(120)~~~~(119)~~ "TRM" means Technical Reclamation Memorandum.

~~(121)~~~~(120)~~ "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

~~(122)~~~~(121)~~ "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

~~(123)~~~~(122)~~ "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

~~(124)~~~~(123)~~ "U.S. EPA" means United States Environmental Protection Agency.

~~(125)~~~~(124)~~ "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

~~(126)~~~~(125)~~ "Valuable environmental resources" means:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.), or those species or habitats protected by similar state statutes; and

(b) Habitats of unusually high value for fish and wildlife, as determined by the cabinet in consultation with state and federal agencies with responsibilities for fish and wildlife.

~~(127)~~~~(126)~~ "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

~~(128)~~~~(127)~~ "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

~~(129)~~~~(128)~~ "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

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

~~(a) "ASTM Standard D 388-77, Standard Specification for Classification of Coals by Rank", (1977), American Society for Testing and Materials, is incorporated by reference;~~

~~(b) "Method for Determination of Slake Durability Index, Kentucky Method 64-513-79", (1979), Kentucky Department of Transportation.~~

~~(2) It may be inspected, copied, or obtained at the Department~~

~~for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 16

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms to be used in 405 KAR Chapter 16.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 16.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 16 and will assist in the accurate interpretation of those administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendment made in response to comment was to correct an error in the definition of "Shadow area". The previous definition included surface disturbances which under the amendments made by HB 234 were not meant to be permitted.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulation. The amendment in response to comment was necessary to correctly define the term.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying terms to be used in 405 KAR Chapter 16. The amendment in response to comment was necessary to clearly define the term and to correct an error made in the original proposed administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendment made in response to comment was necessary to clearly define the term by correcting an error in the originally filed administrative regulation. A correctly defined term will comply with the intent of the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine 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: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or

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amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this proposal. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028 (1), (5), 350.465, 30 C.F.R. Parts 707.5, 730-733, 735, 917, 30 U.S.C. 1253, 1255.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 701.5

2. State Compliance Standards. KRS 350.028 and 350.060.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 701.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of Federal Regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amended After Comments)

#### 405 KAR 18:001. Definitions for 405 KAR Chapter 18.

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS 350.028(1), (5), 350.465, 30 C.F.R. Parts 730-733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation defines terms used in 405 KAR Chapter 18. This administrative regulation differs from federal regulations by including the definition of "angle of draw". This definition is necessary to determine areas subject to subsidence requirements and to comply with the intent of federal regulations.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Acquisition" means purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease, or option, the conduct of surface coal mining and reclamation operations.

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(5) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining



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activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(6) "Angle of draw" means the angle of inclination between the vertical at the edge of the underground mine workings and the point of zero vertical displacement at the edge of a subsidence trough.

(7) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(8) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(9) "Approximate original contour" is defined in KRS 350.010.

(10) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(11) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(12) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(13) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(14) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(15) "Cabinet" is defined in KRS 350.010.

(16) "C.F.R." means Code of Federal Regulations.

(17) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(18) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the

activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(19) "Coal mine waste" means coal processing waste and underground development waste.

(20) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(21) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(22) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(23) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(24) "Community or institutional building" means a structure, other than a public building or occupied dwelling, that is used:

(a) For meetings, gatherings, or functions of:

1. A local civic organization; or
2. Other community group;

(b) As a facility for the following purposes:

1. Educational;
2. Cultural;
3. Historic;
4. Religious;
5. Scientific; or
6. Correctional;

(c) As a mental or physical health care facility;

(d) To supply water;

(e) To generate power;

(f) To treat sewage; or

(g) For another public service.

(25) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(26) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(27) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(28) "Day" means calendar day unless otherwise specified to be a working day.

(29) "dB" means decibels.

(30) "Department" means the Department for Natural Resources.

(31) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(32) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas

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are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(33) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(34) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(35) "Durable rock" means rock that:

(a) Does not slake in water;

(b) Is not reasonably expected to degrade to a size or condition that will block, cause failure of, impair, or restrict the effectiveness of the internal drainage system; and

(c) Has been demonstrated to have an slake durability index value of ninety (90) or greater as determined by:

1. The "Method of Determination of Slake Durability Index (Kentucky Method 64-513-79)"; or

2. A test method that yields an equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

(36) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(37) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(38) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(39) "Fish and wildlife land use", as used in 405 KAR 16:210 and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not.

(40) "Forest land" means land used or managed for the long term production of wood, wood fiber, or wood derived products.

(41) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(42) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(43) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(44) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(45) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(46) "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

(47) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(48) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(49) "Historically used for cropland" means land that:

(a) Has been used for cropland for any of five (5) years or

more of the ten (10) years immediately preceding the:

1. Application; or

2. Acquisition of the land for the purpose of conducting a surface coal mining and reclamation operation;

(b) Would likely have been used for cropland for any five (5) of the ten (10) years immediately preceding the acquisition or application, but for some fact of ownership or control of the land unrelated to the productivity of the land;

(c) Falls outside the five (5) of ten (10) years criteria, but the cabinet determines is clearly cropland on the basis of additional cropland history of:

1. Surrounding land; and

2. The land under consideration.

(50) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(51) "Hz" means hertz.

(52) "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material.

(53) "Impoundment" means a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built.

(54) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(55) "In situ process" means:

(a) In situ gasification;

(b) In situ leaching;

(c) Slurry mining;

(d) Solution mining;

(e) Borehole mining;

(f) Fluid recovery mining; or

(g) Another activity conducted on the surface or underground in connection with:

1. In-place distillation;

2. Retorting;

3. Leaching; or

4. Chemical or physical processing of coal.

(56) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(57) "KAR" means Kentucky administrative regulations.

(58) "KPDES" means Kentucky Pollutant Discharge Elimination System.

(59) "KRS" means Kentucky Revised Statutes.

(60) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(61) "Material damage", as used in 405 KAR 18:210 means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its presubsidence condition.

(62) "Modified highwall" means either:

(a) The highwall resulting from remining where the preexisting

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highwall face is removed; or

(b) The highwall resulting from remining where the preexisting highwall is vertically enlarged.

(63) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(64) "MRP" means mining and reclamation plan.

(65) "MSHA" means Mine Safety and Health Administration.

(66) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(67) "Noncommercial building" means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

(68) "Occupied residential dwelling and structures related thereto" means, for purposes of 405 KAR 8:040, Section 26 and 405 KAR 18:210, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of these structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

(69) "Operations" is defined in KRS 350.010.

(70) "Operator" is defined in KRS 350.010.

(71) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(72) "Other treatment facilities" means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(b) To comply with 405 KAR 18:070.

(73) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(74) "Overburden" is defined in KRS 350.010.

(75) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(76) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(77) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(78) "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(79) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(80) "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond under 405 KAR Chapter 10 and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and

reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, may be excluded from the permit area [the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit].

(81) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(82) "Person" is defined in KRS 350.010.

(83) "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(84) "Previously mined area" means land that was affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title.

(85) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 C.F.R. 657 and which have been "historically used for cropland" as that phrase is defined above.

(86) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area, shadow area, and adjacent areas.

(87) "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(88) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(89) "RAM" means Reclamation Advisory Memorandum.

(90) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all spoil of this nature located in the immediate vicinity of the mining operation.

(91) "Reclamation" is defined in KRS 350.010.

(92) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(93) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(94) "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(95) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(96) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(97) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways

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used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(98) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(99) "SCS" means Soil Conservation Service.

(100) "Sedimentation pond" means a primary sediment control structure:

(a) Designed, constructed, or maintained pursuant to 405 KAR 16:090 or 405 KAR 18:090;

(b) That may include a barrier, dam, or excavated depression to:

1. Slow water runoff; and
2. Allow suspended solids to settle out; and

(c) That shall not include secondary sedimentation control structures, including a straw dike, riprap, check dam, mulch, dugout, or other measure that reduces overland flow velocity, reduces runoff volume, or trap sediment, to the extent that the secondary sedimentation structure drains into a sedimentation pond.

(101) "Shadow area" means the surface area overlying underground mine works and surface areas~~[disturbances]~~ associated with auger and in situ mining.

(102) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(103)~~[(402)]~~ "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(104)~~[(403)]~~ "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(105)~~[(404)]~~ "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(106)~~[(405)]~~ "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(107)~~[(406)]~~ "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(108)~~[(407)]~~ "Steep slope" means any slope of more than twenty (20) degrees.

(109)~~[(408)]~~ "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of

Kentucky.

(110)~~[(409)]~~ "Surface blasting operations":

(a) Means the on-site storage, transportation, and use of explosives in association with:

1. A coal exploration operation;
2. Surface mining activities; or
3. A surface disturbance of underground mining activities;

(b) Includes the following activities:

1. Design of an individual blast;
2. Implementation of a blast design;
3. Initiation of a blast;
4. Monitoring of an airblast and ground vibration; and
5. Use of access control, warning and all-clear signals, and similar protective measures.

(111)~~[(410)]~~ "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(112)~~[(411)]~~ "Surface coal mining operations" is defined in KRS 350.010.

(113)~~[(412)]~~ "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(114)~~[(413)]~~ "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

(115)~~[(414)]~~ "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(116)~~[(415)]~~ "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(117)~~[(416)]~~ "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(118)~~[(417)]~~ "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(119)~~[(418)]~~ "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(120)~~[(419)]~~ "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(121)~~[(420)]~~ "TRM" means Technical Reclamation Memorandum.

(122)~~[(421)]~~ "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(123)~~[(422)]~~ "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

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~~(124)~~~~(123)~~ "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

~~(125)~~~~(124)~~ "U.S. EPA" means United States Environmental Protection Agency.

~~(126)~~~~(125)~~ "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

~~(128)~~~~(127)~~ "Valuable environmental resources" means:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.), or those species or habitats protected by similar state statutes; and

(b) Habitats of unusually high value for fish and wildlife, as determined by the cabinet in consultation with state and federal agencies with responsibilities for fish and wildlife.

~~(129)~~~~(128)~~ "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

~~(130)~~~~(129)~~ "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

~~(131)~~~~(130)~~ "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

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

~~(a) "ASTM Standard D 388-77, Standard Specification for Classification of Coals by Rank", (1977), American Society for Testing and Materials;~~

~~(b) "Method for Determination of Slake Durability Index, Kentucky Method 64-513-79", (1979), Kentucky Department of Transportation.~~

~~(2) It may be inspected, copied, or obtained at the Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 18

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms to be used in 405 KAR Chapter 18.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 18.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 18 and will assist in the accurate interpretation of those administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendment made in response to comment was to correct an error in the definition of "Shadow area". The previous definition included surface disturbances which under the amendments made by HB 234 were not meant to be permitted.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulations in Chapter 18. The amendment in response to comment was necessary to correctly define the term.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying terms to be used in 405 KAR Chapter 18. The amendment in response to comment was necessary to clearly define the term and to correct an error made in the original proposed administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendment made in response to comment was necessary to clearly define the term by correcting an error in the originally filed administrative regulation. A correctly defined term will comply with the intent of the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine or a surface mine that could add underground acreage or implement the use of an auger 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: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this regulatory package. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds

and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.060, 350.465, 30 C.F.R. Parts 730-733, 735, 917, 30 U.S.C. 1253, 1255

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 701.5

2. State Compliance Standards. KRS 350.028 and 35.060.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 701.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of Federal Regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Permits  
(Amended After Comments)

405 KAR 20:001. Definitions for 405 KAR Chapter 20.

RELATES TO: KRS Chapter 350, 7 C.F.R. Part 657, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 350.028, 350.465, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 20.

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(6) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(7) "Application" means the documents and other information

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filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(8) "Approximate original contour" is defined in KRS 350.010.

(9) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(10) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(11) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(12) "Cabinet" is defined in KRS 350.010.

(13) "C.F.R." means Code of Federal Regulations.

(14) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(15) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(16) "Coal mine waste" means coal processing waste and underground development waste.

(17) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including but not limited to: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(18) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(19) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(20) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(21) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(22) "Day" means calendar day unless otherwise specified to be a working day.

(23) "Department" means the Department for Natural Resources.

(24) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(25) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(26) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(27) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(28) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(29) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(30) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(31) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(32) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(33) "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland".

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(34) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(35) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(36) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(37) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and

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fluid recovery mining.

(38) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(39) "KAR" means Kentucky administrative regulations.

(40) "KRS" means Kentucky Revised Statutes.

(41) "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(42) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(43) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(44) "Operations" is defined in KRS 350.010.

(45) "Operator" is defined in KRS 350.010.

(46) "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(47) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(48) "Overburden" is defined in KRS 350.010.

(49) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream".

(50) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(51) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(52) "Permit area" means the area of land indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond under 405 KAR Chapter 10 and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, may be excluded from the permit area~~the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit~~.

(53) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(54) "Person" is defined in KRS 350.010.

(55) "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(56) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 C.F.R. 657 and which have been "historically used for cropland" as that phrase is defined above.

(57) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(58) "RAM" means Reclamation Advisory Memorandum.

(59) "Reclamation" is defined in KRS 350.010.

(60) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as

parcs, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(61) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(62) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(63) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(64) "SCS" means Soil Conservation Service.

(65) "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(66) "Shadow area" means the surface area overlying underground mine works and surface areas~~disturbances~~ associated with auger and in situ mining.

(67) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

~~(68)~~~~(67)~~ "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

~~(69)~~~~(68)~~ "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

~~(70)~~~~(69)~~ "Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different



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kinds of soils and an accompanying report that describes, classifies, and interprets the soils for use. Soil surveys shall meet the standards of the National Cooperative Soil Survey.

(71)(70) "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(72)(74) "Steep slope" means any slope of more than twenty (20) degrees.

(73)(72) "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other activities, or to remove more than twenty-five (25) tons of coal.

(74)(73) "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(75)(74) "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(76)(75) "Surface coal mining operations" is defined in KRS 350.010.

(77)(76) "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 C.F.R. 136).

(78)(77) "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(79)(78) "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(80)(79) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(81)(80) "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(82)(81) "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(83)(82) "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(84)(83) "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(85)(84) "U.S. EPA" means United States Environmental Protection Agency.

(86)(85) "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 20.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly define the terms to be used in 405 KAR Chapter 20.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations to implement a permanent program to regulate coal mining in the commonwealth. This administrative regulation defines terms used in 405 KAR Chapter 20.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions to be used in 405 KAR Chapter 20 and will assist in the accurate interpretation of those administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendment made in response to comment was to correct an error in the definition of "Shadow area". The previous definition included surface disturbances which under the amendments made by HB 234 were not meant to be permitted.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulations in Chapter 20. The amendment in response to comment was necessary to correctly define the term.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying terms to be used in 405 KAR Chapter 20. The amendment in response to comment was necessary to clearly define the term and to correct an error made in the original proposed administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the commonwealth. These amendments are necessary to implement the requirements of HB 234 from the 2017 Legislative Session. The amendment made in response to comment was necessary to clearly define the term by correcting an error in the originally filed administrative regulation. A correctly defined term will comply with the intent of the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates an underground mine or a surface mine that could add underground acreage or implement the use of an auger 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: The entities listed in question (3) above will no longer be required to permit area overlying underground workings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the

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proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a cost reduction associated with this regulatory package. The entities listed in (3) will have reduced cost when publishing notifications in area newspapers.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that operate an underground coal mine will be required to meet the same requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.465, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 701.5

2. State Compliance Standards. KRS 350.028 and 35.060.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F. R. 701.5 defines terms that are to be used in the process of interpreting the applicable chapter in the Code of Federal Regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will make Kentucky's mining program equivalent to the federal program related to the permitting of areas overlying underground works.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amended After Comments)

#### 805 KAR 1:060. Plugging wells[; noncoal-bearing strata].

RELATES TO: KRS 211.892, 211.893, 353.180(1), 353.550  
STATUTORY AUTHORITY: KRS[43A.100,] 353.560(1), 353.739

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.560(1) requires the department to regulate the plugging of all wells. This administrative regulation identifies the minimum acceptable requirements to plug or temporarily abandon wells[drilled through noncoal-bearing strata].

Section 1. Definitions. (1) "Abandoned" is defined by KRS 353.510(12).

(2) "Cement" is defined by KRS 353.010(4).

(3) "Pool" is defined by KRS 353.510(9).

(4) "TENORM" is defined by KRS 211.862(13), and is subject to the exemption established in KRS 211.863(5).

(5) "Unit" is defined by KRS 353.010(18).

(6) "Well" is defined by KRS 353.510(14).

Section 2. Temporary Abandonment Permit. (1) An owner or operator shall not leave a well drilled for oil, gas, salt water disposal, or any other purpose in connection with the production of oil and gas unplugged after the well is no longer used for the purpose it was drilled or converted.

(2) An owner or operator who wants to temporarily abandon a well shall apply for a permit from the division on the Temporary Abandonment Permit form ED-12.

(3)(a) Nothing herein shall prevent the division, upon application and for good cause shown, from issuing a temporary abandonment permit, for a period not to exceed two (2) years. Nothing shall alter the provisions of KRS 353.170 relative to utilizing a well for the purpose of introducing air, gas, water or other liquid pressure into or upon the producing strata for the purpose of recovering oil and gas. The temporary abandonment permit may be renewed at the end of the two (2) year period by reapplication on the Temporary Abandonment Permit form ED-12.

(b) All wells on which a temporary abandonment permit has been issued shall be cased and capped prior to temporary abandonment in a manner so as to protect all potential oil, gas, and fresh water zones.

(4) Each oil and gas well drilled through coal bearing strata shall be cased and vented in a manner to prevent the accumulation of gas in the bore hole.

(5) Pursuant to KRS 353.739, the division shall order a well drilled through a workable coal bed to be plugged and abandoned if:

(a) The well's permit conditions cannot be satisfied by remediation; or

(b) The operator is not able to meet the ordered remediation.

(6) If a well is ordered plugged and abandoned pursuant to KRS 353.739, then a temporary abandonment permit shall not be granted.

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Section 3. Notice for Plugging an Oil or Gas Well. (1)(a) Before work is commenced to plug and abandon a well, the owner or operator shall give notice to the division of their intention to abandon the well.

(b) A representative of the division shall provide plugging and abandonment direction and may be present at the time of plugging the well.

(2) The notice for plugging wells shall include at a minimum:

(a) The permit number of the well;

(b) The location of the well; and

(c) A fixed time when the work of plugging and filling will be commenced. The time shall not be less than five (5) days after the day on which the notice is received by the division.

(3)(a) In addition to the requirements of subsection (2) of this section, an operator of a well drilled through a workable coal bed shall notify, by certified mail, the owners of record, lessee of record, and operators of the coal bed and the proper oil and gas inspector of the intention to plug and abandon the well.

(b) A representative of the coal operator or owner may be present at the plugging and filling of the well.

Section 4. Plugging an Oil and Gas Well in Non-coal Bearing Strata. A well drilled through non-coal bearing strata shall be plugged as established in subsections (1) through (6) of this section.

(1) The bottom of the hole shall be filled to the top of each producing formation, or a bridge shall be placed at the top of each producing formation, and in either event a cement plug not less than fifteen (15) feet in length shall be placed immediately above each producing formation whenever possible.

(2) A cement plug not less than fifteen (15) feet in length shall be placed immediately below all fresh water bearing strata.

(3)(a) A surface cement plug not less than fifteen (15) feet in length shall be placed at the top of the well and cemented to surface.

(b) The casing shall be cut off three (3) feet below surface in a manner as not to interfere with soil cultivation.

(4) An uncased rotary hole drilled with the aid of liquid shall be plugged with approved heavy mud up to the base of the surface string at which point a plug of not less than fifteen (15) feet of cement shall be placed. The hole shall be capped similar to other abandoned holes.

(5) Any well in which casing has been cemented from surface to total depth and casing cannot be pulled may be plugged as follows:

(a) The bottom of the hole shall be filled to the top of the producing formation and a cement plug not less than fifteen (15) feet in length shall be placed above this fill; and

(b) A surface plug shall be placed as established in subsection (3) of this section. An intermediate plug shall not be required.

(6) The operator shall have the option as to the method of placing cement in the hole by:

(a) Dump bailer;

(b) Pumping through tubing; or

(c) Other method approved by the director.

(7) Within thirty (30) days after the plugging of a well has been completed, the owner or operator shall file with the division an Affidavit to Time and Manner of Plugging and Filling Well, Form ED-38.

Section 5. Plugging an Oil and Gas Well in Coal-bearing Strata. Wells drilled through a workable coal bed, including for the extraction of coal bed methane, shall be plugged and abandoned as established in subsections (1) through (7) of this section. (1) A cement plug shall be placed to a point forty (40) feet below the lowest workable coal bed.

(a) The hole shall be filled with cement from the bottom to a point twenty (20) feet above the top of the lowest oil, gas, or water-bearing strata; or

(b) A permanent bridge shall be anchored thirty (30) feet below its lowest oil, gas, or water-bearing strata, and from the bridge it shall be filled with cement to a point twenty (20) feet above the strata.

(2) Following compliance with the requirements of subsection (1)(a) or (b) of this section a cement plug shall be used to completely seal the hole.

(3)(a) Between the sealing plug referenced in subsection (2) and a point twenty (20) feet above the next higher oil, gas, or water-bearing strata, the hole shall be plugged in accordance with subsections (1) and (2) of this section.

(b) Another cement plug shall be installed above this oil, gas, or water-bearing strata in accordance with subsection (2) of this section.

(4) In accordance with subsection (1) through (3) of this section, the hole shall be filled and plugged or bridged, filled, and plugged, in each of its oil, gas, or water-bearing strata. If these strata are not widely separated and are free from water, the strata may be grouped and treated as a single productive stratum.

(5) After plugging all strata a final surface plug shall be anchored approximately ten (10) feet below the bottom of the largest casing in the well and from that point to the surface, the well shall be filled with cement.

(6) The operator shall place cement in the hole in one of the following ways:

(a) Dump bailer;

(b) Pumping through tubing; or

(c) A method approved by the director.

(7) Within thirty (30) days after the plugging of a well has been completed, the owner or operator shall file with the division an Affidavit to Time and Manner of Plugging and Filling Well, Form ED-38.

(8) If any of the strata in the well have been completed or stimulated, creating cavities that cannot readily be filled in the manner established in subsections (1) through (7) of this section, the well operator shall follow either of the following methods:

(a) If the stratum that has been completed or stimulated is the lowest one in the well, there shall be placed, at the nearest suitable point but not less than twenty (20) feet above the stratum, a plug of cement or other suitable material that shall completely seal the hole; but if the completion or stimulation has been done above one (1) or more oil or gas-bearing strata in the well, plugging in the manner established shall be done at the nearest suitable point, but not less than twenty (20) feet below and above the stratum completed or stimulated; or

(b) If the cavity is in the lowest oil or gas-bearing stratum in the well, a liner shall be placed that shall extend from below the stratum to a suitable point, but not less than twenty (20) feet above the stratum in which the completion or stimulation has been done; but if the completion or stimulation has been done above one (1) or more oil or gas-bearing strata in the well, the liner shall be so placed that it shall extend not less than twenty (20) feet above or less than twenty (20) feet below the stratum in which completion or stimulation has been done. After the liner is placed, it shall be compactly filled with cement, clay, or other nonporous sealing material.

(9) Once a well drilled through coal-bearing strata has been filled and securely plugged to a point forty (40) feet below the lowest workable coal bed, and in the judgment of the well operator, the coal operator, and the division a permanent outlet to the surface is required, the outlet shall be provided in the following manner: A plug of cement shall be placed in the well at a depth, not less than ten (10) feet below the lowest workable coal bed. In this plug and passing through the center of it shall be securely fastened an open pipe, not less than two (2) inches in diameter, which shall extend to the surface. At or above the surface the pipe shall be provided with a device that shall permit the free passage of gas and prevent obstruction. After the plug and pipe are set, the hole shall be filled with cement to a point ten (10) feet above the lowest workable coal bed. If there are additional overlying workable coal beds, they shall be treated similarly, if this treatment is necessary in the reasonable judgment of the well operator, the coal operator, and the division. If the parties cannot agree, the decision of the division shall control.

Section 6. Oil and Gas Wells used as Fresh Water Wells. (1) If a well drilled through non-coal-bearing strata is to be plugged and

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can safely be used as a fresh water well, and if the utilization is desired by the landowner, the well need not be filled above the required sealing plug set below fresh water; if a written authority for the use is secured from the landowner and filed with the division.

(2)(a) If the well to be plugged is drilled through coal-bearing strata and can safely be used for a fresh water well, and the utilization is desired by the landowner and is agreeable to the owner or operator of all coal-bearing strata beneath the location of the well, the well shall not be filled above the required sealing plug set below fresh water; if written authority for the use is secured from the landowner, and coal owner or operator, and filed with the division.

(b) In order for the operator to be released of any further plugging responsibility, the operator shall provide to the division evidence of compliance with the domestic water well construction requirements pursuant to 401 KAR 6:310 as administered by the Department for Environmental Protection.

Section 7. Downhole Disposal of TENORM Contaminated Material. (1) On-site downhole disposal of tubular goods, sludge, and scale containing TENORM shall be allowed by the Division of Oil and Gas in combination with plugging and abandonment of an oil or gas production well if an inspector from the Division of Oil and Gas is present for the duration of the disposal and plugging activity and the following standards are met:

(a) The operator shall certify that the owner of the oil and gas rights covering the depths and formations where the TENORM waste is proposed to be disposed has consented, by lease or other document, to allow the on-site disposal of TENORM waste;

(b) The TENORM waste shall be limited to that generated at the lease, pool, or unit where disposal is proposed;

(c) The TENORM waste shall be placed in the well at a depth of at least 200 feet below the base of the deepest encountered underground source of drinking water with a total dissolved solids concentration of 10,000 ppm or less;

(d) The TENORM waste shall be placed in the well in a manner approved by the division;

(e) A cement plug shall be placed below the TENORM waste, isolating the waste from any producing formation and preventing migration of TENORM waste below the disposal interval. The well shall be cemented from above the TENORM waste to the top of the well;

(f) The cement of the surface plug shall be color dyed with red iron oxide; and

(g) A permanent marker that shows the three (3) bladed radiation symbol shall be placed at the top of the surface cement plug or welded to a steel plate at the top of the well casing at ground level.

(2) The operator shall apply to dispose of TENORM downhole, on Application for Authorization for Down-hole Disposal of TENORM Material in Well Plugging and Abandonment Operations, form ED-39, which shall, at a minimum, contain the following information:

(a) A description of the type of TENORM waste disposed;

(b) The approximate volume of each type of waste disposed;

(c) Results of activity concentration analysis of combined Ra-226 and Ra-228 in picocuries per gram (pCi/g) or radiation exposure or dose rate measured through the use of portable radiation detector appropriate for the radiation being measured, calibrated at least annually, and reported in microroentgen per hour ( $\mu\text{R/hr}$ ) or microrem per hour ( $\mu\text{rem/hr}$ );

(d) The name, permit number, and GPS location of the well to be plugged in which TENORM waste is proposed to be disposed; and

(e) The formation or formations from which the TENORM waste originated.

(3) A copy of the Application for Authorization for Down-hole Disposal of TENORM Material in Well Plugging and Abandonment Operations, form ED-39 shall be provided to the Cabinet for Health and Family Services, Radiation Control Branch, the owner of the oil and gas rights covering the depths and formations where the TENORM waste is proposed to be disposed, and to the owner of the surface estate at the time of filing of the application with the

division.

(4) The division shall review the Application for Authorization for Down-hole Disposal of TENORM Material in Well Plugging and Abandonment Operations, form ED-39 for completeness and for compliance with the information in subsection (2) of this section in order to prevent migration of TENORM contaminated wastes from the borehole.

(5) The division shall provide written notice to the applicant of its approval or denial of the application. If the application is denied, the division shall notify the applicant in writing of the additional information necessary to satisfy the requirements of this section.

Section 8. If a person fails to comply with this administrative regulation, any person lawfully in possession of land adjacent to or in the neighborhood of the well may enter on the land upon which the well is located and plug the well in the manner provided in KRS 353.180(1) or this administrative regulation, and may maintain a civil action against the owner or person abandoning the well, jointly or severally, to recover the cost of plugging the well. This section shall not apply to persons owning the land on which the well is situated and drilled by other persons.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Affidavit to Time and Manner of Plugging and Filling Well", Form ED-38, July 2017,

and (b) "Temporary Abandonment Permit", Form ED-12, July 2017;

and (c) "Application for Authorization for Down-Hole Disposal of TENORM Materials in Well Plugging and Abandonment Operations", Form ED-39, September [July] 2017.

2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Unless written permission shall be obtained from the department, no operator or owner shall permit any well drilled for oil, gas, salt water disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted. However, nothing herein shall prevent the department, upon application and for good cause shown, from issuing a temporary permit, for a period not exceeding two (2) years, to an operator to leave a well unplugged, and nothing herein shall alter the provisions of KRS 353.170 relative to utilizing a well for the purpose of introducing air, gas, water or other liquid pressure into or upon the producing strata for the purpose of recovering oil and gas. The permission for temporary abandonment may be renewed at the end of the two (2) year period by reapplication. All wells on which a temporary abandonment permit has been issued shall be cased and capped in such a manner so as to protect all potential oil and/or gas zones and fresh water.

Section 2. Before any work is commenced to plug and abandon any well the owner or operator thereof shall give notice to the department of his intention to abandon such well. Notice shall be given in the manner specified by the department. A duly authorized representative of the department may be present at the time and place specified to supervise the plugging of such well.

Section 3. Wells not drilled through coal-bearing strata may be plugged as follows:

(1) The bottom of the hole shall be filled to the top of each producing formation, or a bridge shall be placed at the top of each producing formation, and in either event a cement plug not less than fifteen (15) feet in length shall be placed immediately above each producing formation whenever possible.

(2) A cement plug not less than fifteen (15) feet in length shall be placed immediately below all fresh water bearing strata.

(3) A plug shall be placed at the surface of the ground in each hole plugged in such a manner as not to interfere with soil cultivation.

(4) An uncased rotary hole drilled with the aid of liquid shall be

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~~plugged with approved heavy mud up to the base of the surface string at which point a plug of not less than fifteen (15) feet of cement shall be placed. The hole shall also be capped similar to other abandoned holes.~~

~~(5) Any well in which casing has been cemented from surface to total depth and no casing can be pulled may be plugged as follows: The bottom of the hole shall be filled to the top of the producing formation and a cement plug not less than fifteen (15) feet in length shall be placed above this fill. A surface plug shall be placed as provided in subsection (3) of this section. No intermediate plugs will be required.~~

~~(6) The operator shall have the option as to the method of placing cement in the hole by:~~

- ~~(a) Dumb bailer;~~
- ~~(b) Pumping through tubing;~~
- ~~(c) Pump and plug; or~~
- ~~(d) Other method approved by the director.~~

~~Section 4. Within thirty (30) days after the plugging of any well has been accomplished, the owner or operator thereof shall file a plugging report with the department setting forth in detail the method used in plugging the well. Such report shall be made on a form provided by the department.~~

~~Section 5. When the well to be plugged may safely be used as a fresh water well, and such utilization is desired by the landowner, the well need not be filled above the required sealing plug set below fresh water; provided, that written authority for such use is secured from the landowner and filed with the department.~~

~~Section 6. If a person fails to comply with this administrative regulation, any person lawfully in possession of land adjacent to or in the neighborhood of the well may enter on the land upon which the well is located and plug the well in the manner provided in KRS 353.180(1) or this administrative regulation, and may maintain a civil action against the owner or person abandoning the well, jointly or severally, to recover the cost of plugging the well. This section shall not apply to persons owning the land on which the well is situated, and drilled by other persons.]~~

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the minimum acceptable requirements to plug or temporarily abandon wells.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish plugging requirements for oil and gas wells.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.560 requires the department to regulate the plugging of all wells. This administrative regulation conforms to the authorizing statutes by establishing plugging requirements for oil and gas wells.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing oil and gas operators the necessary information to meet the division's plugging requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment will incorporate information related to the down-hole disposal of TENORM wastes as well as merge two other plugging regulations into this administrative regulation. The

administrative regulation was amended in response to comments. One phrase was inserted into Section 7(2)(c) in order to clarify that the sampling analysis of the activity concentration is from combined Ra-226 and Ra-228.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate three administrative regulations related to plugging oil and gas wells into one administrative regulation. The amendment in response to comments was to clarify the intent of Section 7(2).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates plugging administrative regulations for oil and gas wells, which is authorized by KRS 353.560. The amendment in response to comments conforms to the authorizing statutes by clarifying the provisions of Section 7(2)(c).

(d) How the amendment will assist in the effective administration of statutes: These amendments consolidate plugging administrative regulations for oil and gas wells as well as establishing the requirements for down-hole disposal of TENORM wastes and plugging requirements for the TENORM waste. The amendment in response to comments assists in the effective administration of statutes by clarifying the intent of Section 7(2)(c).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,000 active oil and gas operators in the commonwealth

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will meet the same plugging requirements as in the past but will also be required to meet additional plugging standards when disposing of TENORM contaminated wastes down the bore hole.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs for plugging wells that will not be used to disposing TENORM wastes. However, there are additional plugging requirements for those wells that are disposing TENORM wastes down-hole.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related to the plugging of oil and gas wells in one administrative regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation or the amendments in response to comments.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation or the amendments in response to comments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general and restricted funds will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas operator.

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### FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation applies almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 211.892, 211.893, 353.560, 353.738, and 353.739

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation or the amendments in response to comments will not generate revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amended After Comments)

#### 900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2017-2019[Update to the 2015-2017] State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2017-2019[Update to the 2015-2017] State Health Plan", October/July/January 2017, is incorporated by reference.

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

PAUL A. COOMES, Executive Director

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 11 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email Laura.Begin@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Molly Lewis, 502-564-7905, molly.lewis@ky.gov.; or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2017-2019 State Health Plan, which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(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 incorporating by reference the 2017-2019 State Health Plan, which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a. KRS 216B.015(28) requires that the State Health Plan be prepared triennially and updated annually.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(2) If 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 incorporates by reference the 2017-2019 State Health Plan. Substantive changes include deletion of the common review criteria; revisions to the special care neonatal beds criteria to allow conversions between Level II and Level III NICU beds and to allow a hospital with 800 births to establish a Level II program; nursing facility criteria were revised to allow transfer/relocation of nursing facility beds within the same county, to a contiguous county, or to a county within the ADD, to delete the criterion regarding alleviation of an emergency circumstance, to allow for the establishment of nursing home beds for the provision of post-acute rehabilitation services, and to delete the requirement for a facility proposing to transfer beds to participate in the Cabinet's National Background Check Programs; home health agency review criteria were revised to delete the exemption criterion for accountable care organizations (ACOs) and to delete the requirement for Home Health applicants to participate in the Cabinet's National Background Check Program; cardiac catheterization review criteria were revised to delete the criteria regarding the cardiac catheterization pilot program for therapeutic catheterization programs without open heart surgery backup, and to establish review criteria for therapeutic catheterization programs to project 200 annual procedures and 50 procedures per interventional cardiologist by the second year of operation; the private duty nursing service definition was revised and the requirement for the applicant to participate in the Cabinet's National Background Check Program was deleted. The Amended After Comments version makes several changes. First, the edition date was changed from July to October. The review criteria for special care neonatal beds was changed to allow a hospital with 700, rather than 800, births to establish a Level II program. The review criteria for nursing facility beds was changed to specify that the calculation for "C", which is the average number of empty beds in the county of application and all Kentucky counties contiguous to the county of application, shall not include nursing facility beds approved pursuant to the Post-Acute Transitional Care Pilot

Program; and to establish requirements for the Post-Acute Transitional Care Pilot Program. The review criteria for home health agencies was amended to change the criterion for an application by a licensed Kentucky acute care hospital or critical access hospital proposing to establish a home health service with a service area no larger than the county in which the hospital is located and contiguous counties. For those applications, the criterion will require the hospital to document, in the last twelve (12) months, the inability to obtain timely discharge for patients who reside in the county of the hospital or a contiguous county and who require home health services at the time of discharge, rather than documenting that the hospital is performing "no different than" or "better than" specified national benchmarks. Additionally, the provisions for private duty nursing were amended to define "private duty nursing agency" and "private duty nursing service", and to change references from "service" to "agency" as appropriate. Lastly, several nonsubstantive changes were made throughout the State Health Plan for grammatical correctness, to use the same forms of expression and numbering format throughout the Plan, to correct typographical errors, and to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the State Health Plan, which is used to determine whether certificate of need applications are consistent with the State Health Plan. Additionally, the Amended After Comments changes were necessary to respond to comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by incorporating by reference the 2017-2019 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the 2017-2019 State Health Plan, which will be used to determine whether certificate of need applications are consistent with the State Health Plan.

(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 and affected parties requesting hearings. Annually, approximately 115 certificate of need applications are filed.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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 submit certificate of need applications will be subject to the criteria set forth in the 2017-2019 State Health Plan.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that submit certificate of need applications will be subject to the revised criteria set forth in the 2017-2019 State Health Plan.

(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 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? Yes, tiering is used as there are different CON review criteria for each licensure category addressed in the State Health Plan.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Policy and may impact any government owned or controlled health care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for 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? 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  
Office of Inspector General  
Division of Audits and Investigations  
(Amended After Comments)

902 KAR 55:110. Monitoring system for prescription controlled substances.

RELATES TO: KRS 218A.010(11)(9), 218A.202, 218A.240  
STATUTORY AUTHORITY: KRS 194A.050, 218A.202(1), (17), 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.202(1) directs the Cabinet for Health and Family Services to establish an electronic system for monitoring Schedule II, III, IV, and V controlled substances[that are dispensed in the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained authorization to operate from the Kentucky Board of Pharmacy]. KRS 218A.250 requires the cabinet to promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of KRS Chapter 218A. This administrative regulation establishes criteria for reporting prescription data, providing reports to authorized persons, and a waiver for a dispenser who does not have an automated recordkeeping system.

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Section 1. Definitions. (1) "Branch" means the Drug Enforcement and Professional Practices Branch in the Division of Audits and Investigations, Office of Inspector General, Cabinet for Health and Family Services.

(2) "Cabinet personnel" means an individual who:

(a) 1. Is directly employed by the Cabinet for Health and Family Services; or

2. Is employed by an agent or contractor of the cabinet;

(b) Has undergone KASPER training; and

(c) Has been approved to use the KASPER system.

(3) "Dispenser" is defined by KRS 218A.010(11)(9), and shall:

(a) Include a dispenser who has a DEA (Drug Enforcement Administration) number or is a pharmacist who owns or is employed by a facility that operates a pharmacy ~~that~~<sup>which</sup> has a DEA number; and

(b) Not include an individual licensed to practice veterinary medicine under KRS Chapter 321.

(4) "Health facility" is defined by KRS 216B.015(13).

(5) "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.

(6) "Patient identifier" means a patient's:

(a) Full name;

(b) Address, including zip code;

(c) Date of birth; and

(d) Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.

(7) "Practitioner" is defined by KRS 218A.010(39)(33).

(8) "Report" means a compilation of data concerning a patient, dispenser, practitioner, or controlled substance.

(9) "Suspected drug overdose" means an acute condition that:

(a) May include physical illness, coma, mania, or hysteria that is the result of consumption or use of a controlled substance, or another substance with which a controlled substance was combined; and

(b) Relates to injury, poisoning by, or other adverse effect of any substance corresponding to the following International Classification of Disease (ICD) version 10 (ICD-10) codes, or equivalent codes in the most recent version of the International Statistical Classification of Diseases and Related Health Problems:

1. T40;

2. T42; or

3. T43.

Section 2. Data Reporting. (1) A dispenser or a health facility that has a DEA number shall report all dispensed Schedule II, III, IV, or V controlled substances, except during the circumstances specified in KRS 218A.202(3)(a) ~~through (c)~~<sup>and (b)</sup>.

(2) A dispenser of a Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet's agent:

(a) Patient identifier;

(b) National drug code of the drug dispensed;

(c) Metric quantity of the drug dispensed;

(d) Date of dispensing;

(e) Estimated days the supply of~~day's supply~~ dispensed medication will last;

(f) Drug Enforcement Administration registration number of the prescriber;

(g) ~~Prescription~~<sup>Serial</sup> number assigned by the dispenser; and

(h) The Drug Enforcement Administration registration number of the dispenser.

~~(3)(a) Prior to July 1, 2013, the data identified in subsection (2) of this section shall be transmitted within seven (7) days of the date of dispensing unless the cabinet grants an extension as provided in subsection (4) or (5) of this section.~~

~~(b) Prior to July 1, 2013, a dispenser that dispenses a controlled substance for the direct administration of the controlled substance to or for a patient in a licensed health facility shall not be required to transmit the data identified in subsection (2) of this section.~~

~~(c) Effective July 1, 2013,] The data identified in subsection (2)~~

of this section shall be transmitted no later than close of business on the business day immediately following the dispensing unless the cabinet grants an extension as provided in subsection (4) or (5) of this section.

(4)(a) An extension may be granted if:

1. The dispenser suffers a mechanical or electronic failure; or

2. The dispenser cannot meet the deadline established by subsection (3) of this section because of reasons beyond his or her control.

(b) A dispenser shall apply to the branch in writing for an extension listed in paragraph (a) of this subsection within twenty-four (24) hours of discovery of the circumstances necessitating the request or on the next date state offices are open for business, following the discovery. An application for an extension shall state the justification for the extension and the period of time for which the extension is necessary.

(5) An extension shall be granted to a dispenser if the cabinet or its agent is unable to receive electronic reports transmitted by the dispenser.

(6) Except as provided in subsection (8) of this section, the data shall be transmitted by:

(a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent;

(b) Secure File Transfer Protocol;

(c) https protocol; or

(d) Secure Virtual Private Network connection.

(7) The data shall be transmitted in the format established by the ["JASAP Telecommunications Format for Controlled Substances["], developed by the American Society for Automation in Pharmacy, Version 4.2[4.1], or a comparable format approved by the branch.

(8) A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the format established by ["JASAP Telecommunications Format for Controlled Substances["] shall report the data identified in subsection (2) of this section using an Internet accessible web portal designated by the cabinet.

(9) To meet the reporting requirement of KRS 218A.202(4), a hospital shall report all positive toxicology screens ~~ordered~~<sup>performed</sup> by the hospital's emergency department to evaluate a patient's suspected drug overdose via the Kentucky Health Information Exchange.

Section 3. Compliance. A dispenser may presume that the patient identification information established in Section 5 of this administrative regulation and provided by the patient or the patient's agent is correct.

Section 4. Request for Report. (1) A written or electronic request shall be filed with the cabinet prior to the release of a report, except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction.

(2) A request for a KASPER patient report shall be made electronically at [www.chfs.ky.gov/KASPER](http://www.chfs.ky.gov/KASPER).

(3) A request for a KASPER provider report made by a peace officer authorized to receive data under KRS 218A.202, or a designated representative of a board responsible for the licensure, regulation, or discipline of prescribing practitioners shall be made by written application on the["Request for] KASPER Report Request for [Law Enforcement and Licensure Boards]"], Form ~~DCB-20L~~ <sup>DCB-15L</sup>.

(4) A medical examiner engaged in a death investigation pursuant to KRS 72.026 may query KASPER for a report on the decedent.

Section 5. Patient Identification Number. (1) A patient or the person obtaining the controlled substance on behalf of the patient shall disclose to the dispenser the patient's Social Security number for purposes of the dispenser's mandatory reporting to KASPER.

(2) If a patient is an adult who does not have a Social Security number, the patient's driver's license number shall be disclosed.

(3) If a patient is an adult who has not been assigned a Social Security number or a driver's license number, the number 000-00-



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0000 shall be used in the Social Security field.

(4) If a patient is a child who does not have a Social Security number or a driver's license number, the number "000-00-0000" shall be used in the Social Security field.

(5) If a patient is an animal, the number "000-00-0000" shall be used in the Social Security number field.

Section 6. KASPER Data and Trend Reports. Cabinet personnel shall ~~have~~<sup>be</sup> authorized access to the data obtained from the KASPER system and trend reports in accordance with KRS 218A.240(7)(a).

Section 7. Data Retention. Data shall be maintained in KASPER according to the Office of Inspector General's retention schedule on file with~~for a period of two (2) years plus the current year prior to its transfer to~~ the State Archives and Records Commission.

Section 8. Error Resolution. (1) A patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic to whom a report has been disclosed under KRS 218A.202(9)(~~8~~) or this administrative regulation may request that information contained in KASPER be corrected if the patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic believes that any information is inaccurate. The patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic shall:

(a) Contact the dispenser who reported the information required by Section 2(2) of this administrative regulation; and

(b) Request that the dispenser correct the information.

(2) If, upon receipt of a request from a patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic pursuant to subsection (1) of this section, the dispenser confirms that the information was reported in error, the dispenser shall:

(a) Transmit corrected information to update the KASPER database within seven (7) calendar days of the request for the correction; and

(b) Notify the patient, patient's representative, practitioner, pharmacist, health facility, or private practitioner's office or clinic that the corrected information has been transmitted.

(3) If a dispenser identifies a KASPER system generated error, the dispenser shall notify the branch. Upon verification of the error, the branch shall:

~~(a) maintains that information regarding the dispensing of a controlled substance was correctly reported to KASPER and the KASPER system generates a report with inaccurate information, the dispenser shall contact the~~ [Drug Enforcement and Professional Practices] ~~branch~~ [(DEPPB)] ~~[to identify the source of an error in the KASPER report, and the cabinet shall]~~ Correct the information in the KASPER database; and

~~(b) (4) Upon correction of information in the KASPER database pursuant to subsection (3) of this section, cabinet staff shall]~~ Notify the patient, patient's representative, practitioner, pharmacist, health facility, private practitioner's office or clinic within five (5) working days of the correction.

Section 9. Referrals to Licensing Boards. If the cabinet becomes aware that a prescriber or dispenser has failed to comply with the reporting requirements of KRS 218A.202 and this administrative regulation, the cabinet shall notify the licensing board or agency responsible for licensing the prescriber or dispenser.

Section 10. Disclosure of Data or Report. (1) The cabinet shall only disclose data to the persons and entities authorized to receive that data under KRS 218A.202(7)(~~6~~).

(2) As a condition precedent to the disclosure of data or a report pursuant to KRS 218A.202(7)(~~6~~)(f), a hospital or long-term care facility shall maintain, and provide upon request by the cabinet, a copy of the hospital or long-term care facility's policy for the management of KASPER data and reports, which:

(a) Describes the hospital or long-term care facility's internal procedures for educating the designated employee or employees on the:

1. Proper use of the KASPER system;

2. Prohibition on the improper use or intentional disclosure of KASPER data to unauthorized individuals; and

3. Sanctions imposed for the improper use or intentional disclosure of KASPER data to unauthorized individuals, including criminal misdemeanor offenses; and

(b) Describes the hospital or long-term care facility's internal procedures for auditing the account, including:

1. The manner in which an employee is added to or removed from access to the account if the employee ends employment or is no longer designated to query KASPER; and

2. The actions taken if a designated employee with access to the employer's KASPER account intentionally misuses his or her privileges to KASPER data or a report, which shall include a report of the incident to the Office of Inspector General.

(4)(a) An individual authorized to receive data under KRS 218A.202(7)(~~6~~) shall not provide the data to any other entity except as provided in KRS 218A.202(9)(~~8~~) and paragraph (b) of this subsection.

(b) In addition to the purposes authorized under KRS 218A.202(9)(~~8~~)(e), and pursuant to KRS 218A.205(2)(a) and (6), a practitioner or pharmacist who obtains KASPER data or a report under KRS 218A.202(7)(~~6~~)(e)1. or who in good faith believes that any person, including a patient, has violated the law in attempting to obtain a prescription for a controlled substance, may report suspected improper or illegal use of a controlled substance to law enforcement or the appropriate licensing board.

(5) A hospital or long-term care facility shall maintain and adhere to the entity's internal policy regarding the management of KASPER data and reports.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ASAP Telecommunications Format for Controlled Substances", American Society for Automation in Pharmacy, Version 4.2, September 2011[4.1, November 2009]; and

(b) "[~~Request for~~]KASPER Report Request for [(L]Law Enforcement and Licensure Boards[)]", Form DCB-20L, October 2017 [DCB-15L, February 2016][12/10].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Drug Enforcement and Professional Practices Branch, Office of the Inspector General, Cabinet for Health and Family Services, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 10, 2017

FILED WITH LRC: October 11, 2017 at 4 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, email [stephanie.brammer@ky.gov](mailto:stephanie.brammer@ky.gov), phone 502-564-2888; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements related to the State's prescription monitoring program or "Kentucky All-Schedule Prescription Electronic Reporting (KASPER)" system, designed to help prevent and detect the diversion and abuse of controlled substances.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 218A.202.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms

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to the content of KRS 218A.202 by establishing the KASPER system for monitoring Schedules II, III, IV, and V controlled substances.

(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 implementing the KASPER system and sets forth the mandatory reporting requirements for dispensers of controlled substances.

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

(a) How the amendment will change this existing administrative regulation: For purposes of implementing HB 314 from the 2017 legislative session, this amendment defines the term "suspected drug overdose" as it relates to the new requirement established in KRS 218A.202(4) for hospitals to report all positive toxicology screens ordered by the hospital's emergency department to evaluate a patient's suspected drug overdose. This amendment also makes technical changes to correct obsolete cross-references and delete reporting timeframes that were in effect prior to July 1, 2013. In response to public comments, the amended after comments version of 902 KAR 55:110 clarifies that drug testing is "ordered" and not "performed" by the hospital's emergency department when evaluating a patient's suspected overdose. The amended after comments version also references use of the most recent version of the ICD-10, clarifies the process for error remediation when a dispenser identifies a KASPER system generated error, and replaces Form DCB-15L with DCB-20L in an effort to obtain additional information intended to facilitate requests from law enforcement and licensure boards for KASPER data.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the new reporting requirement established in KRS 218A.202(4) as a result of the passage of HB 314.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 218A.202 by implementing KASPER system requirements for monitoring Schedule II through V controlled substances.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist with the effective administration of the statutes by implementing KASPER system 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 practitioners and dispensers required by state law to use the KASPER system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pursuant to KRS 218A.202(4) and Section 2(9) of this administrative regulation, hospitals are required to report all positive toxicology screens ordered by the hospital's emergency department and performed by the lab to evaluate a patient's suspected drug overdose. Although this information must be reported via the Kentucky Health Information Exchange (KHIE), hospitals that have not yet established connectivity to KHIE may submit their plans for implementation to the Cabinet.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by prescribing practitioners or pharmacies in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providing a prescribing practitioner with critical information regarding a patient's history of drug overdose, if any, enhances the practitioner's ability to make an informed decision when prescribing controlled substances.

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

(a) Initially: The initial cost of implementing this amendment is budget neutral.

(b) On a continuing basis: The estimated recurring cost to KASPER is \$32,240 for helpdesk support.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is from general funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects practitioners and dispensers required by state law to use the KASPER system.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.202

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

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

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

(c) How much will it cost to administer this program for the first year? The initial cost of implementing this amendment is budget neutral.

(d) How much will it cost to administer this program for subsequent years? The estimated recurring cost to KASPER is \$32,240 for helpdesk support.

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Public Health  
Division of Public Health Protection and Safety  
(Amended After Comments)

902 KAR 100:180. Technologically Enhanced Naturally Occurring Radioactive Material related to oil and gas development.

RELATES TO: KRS 189.150, 211.842-211.990, 216B.050(22), Chapters 224 and 353, 401 KAR Chapters 47 and 48, 902 KAR 100:010, 100:019, 100:021, 100:022, 100:040

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1)(a), 211.842, 211.844(1), 211.863(6), 211.865,

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211.893(2)

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.893(2) directs the cabinet to exercise its regulatory authority to ensure the proper management of oil- and gas-related wastes containing technologically enhanced naturally occurring radioactive material (TENORM). This administrative regulation establishes radiation protection standards for the possession, use, transport, transfer, and disposal of TENORM related to oil and gas development.

Section 1. Definitions. (1) "Activity concentration" means the rate of disintegration (transformation) or decay of radioactive material per unit of dry mass.

(2) "Oil and gas development":

(a) Means the drilling, operation, and closure of a well permitted and regulated pursuant to KRS Chapter 353, including:

1. A stratigraphic test well;
2. An oil **or** **and** gas production well;
3. A well drilled or used for enhanced recovery or for disposal of oil **or** **and** gas-related wastes; or
4. A related production and storage facility; and

(b) Includes gathering lines, but does not include subsequent transmission or processing of produced oil or gas not permitted or regulated pursuant to KRS Chapter 353.

(3) "Technologically Enhanced Naturally Occurring Radioactive Material" or "TENORM" is defined by KRS 211.862(13).

(4) "Well operator" is defined by KRS 353.010(20).

Section 2. Applicability. (1) This administrative regulation shall apply to a person who receives, owns, possesses, uses, processes, transfers, transports, distributes, arranges for the disposal of, or disposes of TENORM with an activity concentration greater than five (5.0) picocuries per gram of combined radium-226 (Ra-226) and radium-228 (Ra-228).

(2) This administrative regulation shall apply only to TENORM related to oil and gas development.

(3) Each person subject to this administrative regulation shall manage and dispose of waste containing TENORM:

(a) Pursuant to Section 6 of this administrative regulation; or

(b) In accordance with an alternate method authorized by the cabinet upon written request or upon the cabinet's initiative in accordance with this administrative regulation and administrative regulations of the Energy and Environment Cabinet.

(4) Exemptions to this administrative regulation are found in Section 3 and are not considered a hazard to public health based on scientific and health rationale.

Section 3. Exemptions. The following are exempt from the requirements of this administrative regulation:

(1) Background activity concentrations upon specific request and the written approval of the cabinet;

(2) Drill cuttings and associated residual pit fluids from wells permitted pursuant to KRS Chapter 353 and managed in accordance with the requirements of that chapter; and

(3) Water produced from or utilized during oil or gas well development or production operations, including produced water and water flowed back following hydraulic fracturing operations that is disposed of in injection wells that are regulated and permitted in accordance with KRS Chapter 353 and, where applicable, the Safe Drinking Water Act and Underground Injection Control Program.

Section 4. Sample Collection and Analysis. (1) All sample collection pursuant to this section shall be conducted so as to be representative of the entire waste load or container.

(2) Sample collection and analysis of the TENORM-containing waste shall take place prior to disposal in the following manner:

(a)1. At least five (5) representative samples taken randomly from within the load or container shall be composited into one (1)

sample and analyzed; or

2. For tubing, a representative sample shall be taken every 500 feet;

(b) Analysis of TENORM waste proposed to be transported off-site for management or disposal shall be conducted by a laboratory accredited by the National Environmental Laboratory Accreditation Conference to perform radiological analysis.

(c) Each sample analyzed by an accredited laboratory shall be analyzed for the activity concentration of combined Ra-226 and Ra-228;

(d) For TENORM waste being disposed of downhole pursuant to Section 6(4) of this administrative regulation, sample collection and analysis shall be performed:

1. Pursuant to paragraph (a)-(c) of this subsection; or

2. At the election of the well operator, by measuring the highest on-contact radiation exposure rate or radiation dose rate reported in microrentgen per hour ( $\mu\text{R/hr}$ ) or microrem per hour ( $\mu\text{rem/hr}$ ) through the use of a portable radiation detector that is:

a. Appropriate for the radiation being measured; and

b. Calibrated at least annually.

(e) The cabinet may require additional testing if another progeny is considered to be of primary concern.

(3) For the purpose of determining disposal method pursuant to Section 6 of this administrative regulation, sample collection and analysis meeting the requirements of subsection (2) of this section may additionally occur after the waste has been prepared or treated for disposal as long as the waste is not treated beyond the minimum required for disposal.

Section 5. Transporting TENORM Waste for Management or Disposal. (1) TENORM waste being transported for management or disposal shall be:

(a) Accompanied by a waste profile or manifest document pursuant to Section 8 of this administrative regulation;

(b) Covered and contained during transportation in accordance with general standards of the U.S. Department of Transportation and Kentucky Transportation Cabinet; and

(c) Packaged or stabilized as needed to prevent dispersion during transportation or landfill placement.

(2) Other than TENORM wastes stored on-site prior to disposal in conjunction with an oil or gas operation permitted pursuant to KRS Chapter 353 and those materials awaiting return transportation following rejection at the disposal facility in accordance with Section 6(6)(c) of this administrative regulation, the storage or treatment of TENORM waste is allowed only if licensed pursuant to 902 KAR 100:040.

Section 6. Disposal of Waste. (1) TENORM waste with an activity concentration greater than five (5.0) and less than or equal to 100 pCi/g of combined Ra-226 and Ra-228 shall be disposed in a:

(a) Landfill meeting the design and construction standards of a contained landfill as defined by the Energy and Environment Cabinet that:

1. Possesses a current permit demonstrating compliance with the requirements of KRS 224 and administrative regulations promulgated thereunder; and

2. Ensures the disposal is in accordance with statutory provisions of KRS 224 and regulatory provisions of 401 KAR that apply specifically to the disposal of TENORM waste in such a facility;

(b) Well that is regulated and permitted for such disposal pursuant to the requirements of subsection (4) of this section; or

(c) Landfill meeting the requirements of subsection (2)(a) or (2)(b) of this section.

(2) TENORM waste with an activity concentration greater than 100 and less than or equal to 200 pCi/g of combined Ra-226 and Ra-228 shall be disposed of in a:

(a) Landfill located in Kentucky specifically permitted by the Energy and Environment Cabinet to accept such TENORM wastes for disposal or located in Illinois as specified under the terms and conditions of the Central Midwest Interstate Low-Level Radioactive Waste Compact pursuant to KRS 211.859;

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(b) Licensed low-level radioactive waste disposal facility as directed by 902 KAR 100:021; or

(c) Well that is regulated and permitted for such disposal pursuant to the requirements of subsection (4) of this section.

(3) TENORM waste with an activity concentration greater than 200 pCi/g of combined Ra-226 and Ra-228 shall be disposed of in a:

(a) Licensed low-level radioactive waste disposal facility as directed by 902 KAR 100:021; or

(b) Well that is regulated and permitted for such disposal pursuant to the requirements of subsection (4) of this section.

(4) The downhole disposal of TENORM waste into a well located on the same lease, pool, or unit from which the TENORM waste was generated is allowed if:

(a) The well is permitted by the Energy and Environment Cabinet;

(b) Disposal is done in accordance with the requirements of the Energy and Environment Cabinet; and

(c) The radioactivity is analyzed pursuant to Section 4(2)(d) of this administrative regulation and reported to and maintained by the Energy and Environment Cabinet.

(5)(a) TENORM waste imported from outside of Kentucky or Illinois is prohibited from being disposed of in Kentucky pursuant to KRS 211.859.

(b) The disposal of TENORM waste with an activity concentration greater than 200 pCi/g of combined Ra-226 and Ra-228 in a landfill in Kentucky is prohibited.

(6) Prohibited TENORM waste that is delivered to a landfill for disposal shall be rejected. The owner or operator of the landfill shall:

(a) Record the:

1. Source;
2. Amount;
3. Generator; and

4. Other identifying information about the rejected waste; and

(b) Notify the cabinet by telephone, fax, or electronic mail within one (1) business day of the rejection, impoundment, and quarantine of such material. Contact telephone numbers are established in 902 KAR 100:040, Section 15(3); and

(c) Impound and quarantine the waste load until the cabinet determination on the disposition of the waste providing that the impounding and quarantining of such waste by the owner or operator of the landfill shall not constitute storage nor cause the owner or operator of the landfill to become responsible under law for the further management or disposition of such waste.

(7) Records of disposal, including waste profiles and manifests, shall be maintained by the owner or operator of the landfill for thirty (30) years after closure of the facility.

Section 7. Material or Real Property Containing TENORM. (1) The transfer of TENORM not exempt pursuant to Section 3 is authorized if the equipment and facilities contaminated with TENORM are to be used by the recipient for the same purpose.

(2) Transfers made pursuant to subsection (1) of this section do not relieve the person making the transfer from the responsibilities of assessing the extent of TENORM contamination or material present, informing the person receiving the TENORM of these assessments, and maintaining records required by this administrative regulation.

(3) The transfer of TENORM products not exempt in Section 3 is authorized provided the requirements of this section are met and the product is accompanied by a waste profile or manifest document pursuant to Section 8.

(4) The remediation of material contaminated with TENORM shall be performed only if licensed to do so pursuant to 902 KAR 100:040.

Section 8. Record Keeping Requirements. (1) A person in possession of TENORM waste with an activity concentration greater than five (5.0) pCi/g and less than or equal to 100 pCi/g of combined Ra-226 and Ra-228 being transported for management or disposal shall maintain and provide to the off-site treatment or disposal facility receiving such waste a waste profile or manifest containing such information as required by the Energy and

Environment Cabinet.

(2) A person in possession of TENORM waste with an activity concentration greater than 100 pCi/g and less than or equal to 200 pCi/g of combined Ra-226 and Ra-228 being transported shall maintain a copy of the form RPS 180, TENORM Manifest, ~~RPS 180~~. The manifest shall contain the:

(a) Name and signature of any:

1. Generating facility owner or operator;
2. Transporter company; and
3. Receiving facility owner or operator.

(b) Identity and business contact information of the accredited laboratory that analyzed the samples;

(c) Type, amount, activity concentration, and source of TENORM being transported; and

(d) Unique tracking number established by the generator.

(3) A person in possession of TENORM waste with an activity concentration greater than 200 pCi/g of combined Ra-226 and Ra-228 activity concentration being transported shall maintain records in accordance with 902 KAR 100:021.

Section 9. Worker Training and Safety. (1) A landfill approved for the disposal of TENORM waste pursuant to Section 6(2) shall implement a worker training program and safety program to meet the requirements of 902 KAR 100:019.

(2)(a) A landfill permitted to accept TENORM waste pursuant to Section 6(2) shall monitor individuals for exposure to radiation and radioactive material as required by 902 KAR 100:019, Section 13, for at least two (2) years.

(b) Personnel dosimeters shall meet the requirements of 902 KAR 100:019, Section 12.

(c) If the average result is less than 200 millirems (2.0 mSv) per year, suspension of individual monitoring may be requested and approved in writing by the cabinet.

Section 10. Violations. (1) A violation of this administrative regulation shall be subject to KRS 211.869(1) and (3) and KRS 211.990(2) and (4).

(2) A violation of an Energy and Environment Cabinet regulation referenced in this administrative regulation shall not be subject to the provisions of KRS 211.869 or KRS 211.990.

Section 11. Incorporation by Reference. (1) Form RPS 180, "TENORM Manifest", 10/2017[7/2017], is incorporated by reference.

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

CONNIE GAYLE WHITE, MD, Deputy Commissioner  
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 10, 2017

FILED WITH LRC: October 11, 2017 at 4 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jennifer Wolsing, [Jennifer.Wolsing@ky.gov](mailto:Jennifer.Wolsing@ky.gov), phone 502-564-7905, ext. 3414, and Laura Begin,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes radiation protection standards for the possession, use, transport, transfer, and disposal of Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) related to oil and gas development.

(b) The necessity of this administrative regulation: KRS 211.842(1) states that the Cabinet is the radiation control agency of the State of Kentucky. House Bill 563 passed as emergency legislation in the 2016 Regular Session and created KRS 211.893. KRS 211.893(2) directs the Cabinet to exercise its regulatory authority to ensure the proper management of oil- and gas-related

wastes containing NORM.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the Secretary of the Cabinet to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.893(2) directs the Cabinet to exercise its regulatory authority to ensure the proper management of oil- and gas-related wastes containing NORM. KRS 211.863 was amended in the 2017 Regular Session to give the Cabinet the authority to regulate as TENORM any naturally occurring radioactive material made more accessible by human activity, or naturally occurring radioactive material that has radionuclide concentrations increased by human activities above levels encountered in the natural state. This administrative regulation contains safe methods of disposal for TENORM of different radioactivity levels related to oil and gas development.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Generators of TENORM waste related to oil and gas development and those involved with the disposal of TENORM waste will be informed on the safe dispose of radioactive material.

(2) If 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 makes minor clarifying additions in response to comments received during the public comment period.

(b) The necessity of the amendment to this administrative regulation: The amendments made to this administrative regulation were requested by commenters for clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment only makes minor clarifying additions in response to comments received during the public comment period.

(d) How the amendment will assist in the effective administration of the statutes: The amendment makes minor clarifications at the request of commenters.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Oil and gas development, processors and transferors of oil and gas development related wastes, specific licensees, landfills receiving oil and gas related wastes, and the Energy and Environment Cabinet as it permits oil and gas operations and the landfill industry. KRS 211.893 encourages the Energy and Environment Cabinet and Cabinet for Health and Family Services to seek input from stakeholders in the development of this administrative regulation, resulting in the reemergence of an oil and gas workgroup. This workgroup is composed of representatives from the Energy and Environment Cabinet, Kentucky Chamber of Commerce, Kentucky Geological Survey, oil and gas industry, landfill industry, environmental advocacy groups, and the Cabinet for Health and Family Services. The public at large has also attended these meetings. This administrative regulation is the result of workgroup meetings and communications.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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: Generators of oil and gas development related waste containing TENORM will be required to obtain representative samples of the load or container, composite the sample if able, and have it analyzed for the activity concentration of Radium-226 and -228. How the waste is disposed of is determined by its radioactivity, whether that be on-site, down-hole disposal, in a facility permitted as a landfill, in a special TENORM landfill, or in a low level radioactive waste (LLRW) facility. Required information must be recorded on a TENORM manifest and the manifest will accompany the waste throughout transfer(s) to the disposal facility. If one were established in Kentucky, a TENORM specific landfill would be required to implement a worker training program and

safety program and shall monitor individuals for exposure to radiation for at least two years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The tests for activity concentration from a waste sample costs approximately \$100.00. The cost of disposal will vary depending on the radioactivity of the waste, but it will be cheaper or the same as current costs as all TENORM wastes must be transferred to a LLRW facility out west in the absence of this regulation. The radiation monitoring a TENORM specific landfill would have to perform would cost about \$20.00/person/year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The oil and gas industry related to development and landfill industry will have reduced liability and will know that following this regulation results in less risk of radiation exposure to the citizens of Kentucky. Depending on the level of radioactivity, some waste will be disposed of on-site, at a regular landfill, or down-hole instead of having to be transferred to another state. There are currently no TENORM-specific landfills in Kentucky, but this regulation may make their development economically feasible.

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

(a) Initially: There are no costs to the administrative body associated with this administrative regulation.

(b) On a continuing basis: There are no costs to the administrative body associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost to the administrative body associated with this administrative regulation or the enforcement of such. The administrative body will only be involved upon request or complaint, as it currently is in TENORM matters.

(7) Provide an assessment of whether an 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 associated with this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees are associated with this amendment.

(9) TIERING: Is tiering applied? Yes. This administrative regulation contains different methods of disposal for different radioactivity levels of TENORM waste. This administrative regulation is not applicable concerning TENORM waste with a radioactivity level of five (5.0) picocuries per gram or less.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Energy and Environment Cabinet will be promulgating and amending administrative regulations for the permitting and enforcement of activities associated with this program (oil and gas industries and landfills) and referencing this administrative regulation for radiation standards.

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) requires the secretary of the cabinet to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.842(1) states that the Cabinet is the radiation control agency of the State of Kentucky. House Bill 563 passed as emergency legislation in the 2016 Regular Session and created KRS 211.893. KRS 211.893(2) directs the cabinet to exercise its regulatory authority to ensure the proper management of oil- and gas-related wastes containing NORM. KRS 211.863 was amended in the 2017 Regular Session to give the Cabinet the authority to regulate as TENORM any naturally occurring radioactive material made more accessible by human activity, or naturally occurring radioactive material that has radionuclide concentrations increased

by human activities above levels encountered in the natural state.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year of the administrative regulation. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

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

(c) How much will it cost to administer this program for the first year? There are no costs to the administrative body associated with this administrative regulation and the radiation control program is already in operation.

(d) How much will it cost to administer this program for subsequent years? There are no costs to the administrative body associated with this administrative regulation and the radiation control program is already in operation.

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(Amended After Comments)**

**907 KAR 1:045. Reimbursement provisions and requirements regarding community mental health center services.**

RELATES TO: KRS 205.520(3), 205.8451, 210.370-210.485[, 210.380], 42 C.F.R. 400.203, 413, 438.2, 447.325, 42 U.S.C. 1396n(c), 1396r-8(a)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313, [42 C.F.R.-447.325,] 42 U.S.C. 1396a[-d]

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 205.6313(4) requires the cabinet to promulgate administrative regulations to implement Medicaid reimbursement for primary care practitioners at community mental health centers. This administrative regulation establishes the reimbursement provisions and requirements regarding community mental health center services provided to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. Definitions. (1) "1915(c) home and community based waiver services provider" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Allowable costs" means that portion of a facility's cost that may be allowed by the department for reimbursement purposes.

(3) "Community board for mental health or individuals with an intellectual disability" means a board established pursuant to KRS 210.380.

(4) "Community mental health center" or "CMHC" means a facility that meets the community mental health center requirements established in 902 KAR 20:091 [~~provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485~~] [~~meets the community mental health center requirements established in 902 KAR 20:094~~].

(5) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

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

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

(8) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(9) "Federal indirect rate" means the rate approved by the United States Department for Health and Human Services (HHS) for grantee institutions to be used to calculate indirect costs as a percentage of direct costs.

(10) "Federal Register" means the official journal of the United States federal government that publishes government agency rules and public notices.

(11) "Healthcare Common Procedure Coding System code" means a billing code:

(a) Recognized by Medicare; and

(b) Monitored by the Centers for Medicare and Medicaid Services.

(12) [~~Injectable drug" means an injectable, infused, or inhaled drug or biological that:~~

(a) Is not excluded as a non-covered immunization or vaccine;

(b) Requires special handling, storage, shipping, dosing, or administration; and

(c) Is a rebatable drug.

(13) [~~Interim reimbursement" means a reimbursement:~~

(a) In effect for a temporary period of time; and

(b) That does not represent final reimbursement for services provided during the period of time.

(14) [(44)] "Kentucky-specific Medicare Physician Fee Schedule" means the list of current reimbursement rates for physician services established by the Centers for Medicare and Medicaid Services and available on the CMS Web site at [www.cms.gov](http://www.cms.gov) [~~established by the department in accordance with 907 KAR 3:010, Section 3~~].

(14) [(45)] "Managed care organization" 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.

(15) [(46)] "Medicaid allowable costs" means the costs:

(a) Associated with the Medicaid-covered services covered pursuant to 907 KAR 1:047 and 907 KAR 1:044:

1. Rendered to recipients who are not enrollees; and

2. Not rendered as a 1915(c) home and community based waiver services provider; and

(b) Determined to be allowable costs by the department.

(16) [(47)] "Medical Group Management Association (MGMA) Physician Compensation and Production Survey Report" means a report developed and owned by the Medical Group Management Association that:

(a) Highlights the critical relationship between physician salaries and productivity;

(b) Is used to align physician salaries and benefits with provider production; and

(c) Contains:

1. Performance ratios illustrating the relationship between compensation and production; and

2. Comprehensive and summary data tables that cover many specialties.

(17) [(48)] "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(18) [(49)] "Medicare Economic Index" means a measure of inflation:

(a) Associated with the costs of physicians' practices; and

(b) Published in the Federal Register.

(19) [(20)] "Outreach services" means provider programs:

(a) Specifically designed to:

1. Engage recipients for the purposes of supporting Medicaid or Children's Health Insurance Program (CHIP) enrollment efforts;

2. Assist recipients with finding healthcare or coverage options;

and

3. Promote preventive services for recipients; and

(b) That are directly assigned or allocated to a cost report line that is not cost settled by the department.

~~(20)~~~~(21)~~ "Payment plan request" means a request to pay an amount owed to the department over a period of time that is agreed to by the department.

~~(21)~~ "Physician administered drug" or "PAD" means any rebateable covered outpatient drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including providers who are physician offices or another outpatient clinical setting; and

(c) An injectable or noninjectable drug furnished incident to provider services that are billed separately to Medicaid.

(22) "Primary care services" means services covered as established in 907 KAR 1:047.

(23) "Provider" is defined by KRS 205.8451(7).

(24) "~~Rebateable~~~~[Rebateable drug]~~" means a drug for which the ~~drug~~~~[drug's]~~ manufacturer has entered into and has in effect~~[or complied with]~~ a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(25) "Recipient" is defined by KRS 205.8451(9).

(26) "State fiscal year" means the period beginning on July 1 of a calendar year and ending on June 30 of the following calendar year.

Section 2. General Reimbursement Provisions. (1) The department shall reimburse a participating in-state community mental health center under this administrative regulation for services:

(a) If the services are:

1. Covered pursuant to:

a. 907 KAR 1:044; or

b. 907 KAR 1:047;

2. Not provided by the CMHC acting as a 1915(c) home and community based waiver services provider, as those services are reimbursed based on the home and community based waiver;

3. Provided to recipients who are not enrolled with a managed care organization; and

4. Medically necessary; and

(b) Based on the community mental health center's Medicaid allowable costs.

(2) The department's reimbursement shall include reimbursing:

(a) On an interim basis during the course of a cost report period; and

(b) A final reimbursement for the state fiscal year that results from a reconciliation of the interim reimbursement amount paid to the CMHC compared to the CMHC's Medicaid allowable cost by cost center for the state fiscal year.

Section 3. Interim Reimbursement for Primary Care Services and ~~PAD~~~~[injectable—Drugs]~~. (1) The department's interim reimbursement to a CMHC for primary care services shall depend upon the type of primary care service.

~~(2)(a)[1.]~~ The department's interim reimbursement for~~[physician]~~ services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless ~~a~~~~[no]~~ reimbursement for the service does not exist~~[exists]~~ on the current Kentucky-specific Medicare Physician Fee Schedule for the following:

1. Physician services;

2. Laboratory services;

3. Radiological services;

4. Occupational therapy;

5. Physical therapy; or

6. Speech-language pathology~~[for the given service].~~

~~(b) If~~~~[2.—If no]~~ reimbursement for a given~~[physician]~~ service listed in paragraph (a) of this subsection does not exist~~[exists]~~ on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010 or 907 KAR 8:045.

~~[(b)1.]~~ The department's interim reimbursement for laboratory services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Laboratory Fee Schedule unless no reimbursement for the service exists on the current Kentucky-specific Medicare Laboratory Fee Schedule for the given service.

~~2.~~ If no reimbursement for a given laboratory service exists on the current Kentucky-specific Medicare Laboratory Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010.

~~(c)1.~~ The department's interim reimbursement for radiological services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the service exists on the current Kentucky-specific Medicare Physician Fee Schedule for the given service.

~~2.~~ If no reimbursement for a given radiological service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010.

~~(d)1.~~ The department's interim reimbursement for occupational therapy service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.

~~2.~~ If no reimbursement for a given occupational therapy service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.

~~(e)1.~~ The department's interim reimbursement for physical therapy service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.

~~2.~~ If no reimbursement for a given physical therapy service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.

~~(f)1.~~ The department's interim reimbursement for speech-language pathology service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.

~~2.~~ If no reimbursement for a given speech-language pathology service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.]

(3) The department's interim reimbursement for the cost of ~~PAD~~~~[injectable—drugs—administered]~~ in a CMHC shall be the reimbursement methodology established in 907 KAR 23:020~~[3:010 for injectable drugs]~~.

Section 4. Interim Reimbursement for Behavioral Health Services. (1)(a) To establish interim rates for behavioral health services effective for dates of service through June 30, 2018, the department shall use the CMHC rates paid effective July 1, 2015.

(b) To establish interim rates for behavioral health services effective for dates of service July 1, 2018, and each subsequent July 1, the department shall use a CMHC's most recently submitted cost report that meets the requirements established in paragraph (c) of this subsection.

(c) The cost report shall comply with all requirements established in Section 5(1) of this administrative regulation.

(2) The department shall:

(a) Review the cost report referenced in subsection (1)(b) of this section; and

(b) Establish interim rates for Medicaid-covered behavioral health services:

1. To be effective July 1, 2018;

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2. Based on Medicaid allowable costs as determined by the department through its review;

3. Intended to result in a reimbursement for Medicaid-covered behavioral health services:

- a. Provided to recipients who are not enrollees; and
- b. That equals the department's estimate of behavioral health services' costs for the CMHC for the period; and

4. That shall be updated effective July 1, 2019, and each July 1 thereafter, based on the most recently received cost report referenced in subsection (1)(b) of this section.

(3) Interim rates for behavioral health services effective July 1 each calendar year shall have been trended and indexed from the midpoint of the cost report period to the midpoint of the rate year using the Medicare Economic Index.

(4) To illustrate the timeline referenced in subsection (2)(b)1. of this section, a cost report submitted by a CMHC to the department on December 31, 2017, shall be used by the department to establish behavioral health services' interim rates effective July 1, 2018.

(5)(a) A behavioral health services interim rate shall not be subject to retroactive adjustment except as specified in this subsection.

(b) The department shall adjust a behavioral health services interim rate during the state fiscal year if the rate that was established appears likely to result in a substantial cost settlement that could be avoided by adjusting the rate.

(c)1. If the cost report from a CMHC has not been audited or desk-reviewed by the department prior to establishing interim rates for the next state fiscal year, the department shall use the cost report under the condition that interim rates shall be subject to adjustment as established in subparagraph 2. of this paragraph.

2. A behavioral health services interim rate based on a cost report that has not been audited or desk-reviewed shall be subject to adjustment when the audit or desk review is completed.

3. An unaudited cost report shall be subject to an adjustment to the audited amount after the auditing has occurred.

(d) Upon receipt of the cost report filed December 31, 2017, the department shall review the cost report to determine if the interim rates established in accordance with subsection (1)(a) of this section need to be revised to more closely reflect the costs of services for the interim period.

Section 5. Final Reimbursement Beginning with the State Fiscal Year that Begins July 1, 2018. (1)(a) For the state fiscal year spanning July 1, 2017, through June 30, 2018, and for subsequent state fiscal years, by December 31 following the end of the state fiscal year, a CMHC shall submit a cost report to the department:

1. In a format that has been approved by the Centers for Medicare and Medicaid Services;

2. That has been audited by an independent auditing entity; and

3. That states all of the:

a. CMHC's Medicaid allowable direct costs for:

(i) Medicaid-covered services rendered to eligible recipients during the cost report period; and

(ii) Medicaid-covered ~~PAD[injectable drugs]~~ rendered to eligible recipients during the cost report period;

b. CMHC's costs associated with:

(i) Medicaid-covered services rendered to enrollees during the cost report period; and

(ii) Medicaid-covered ~~PAD[injectable drugs]~~ rendered to enrollees during the cost report period;

c. Costs of the community board for mental health or individuals with an intellectual disability under which the CMHC operates for the cost report period; and

d. CMHC's costs associated with services rendered to individuals:

(i) That were reimbursed by an insurer or party other than the department or a managed care organization; and

(ii) During the cost report period.

(b) To illustrate the timeline referenced in paragraph (a) of this subsection, an independently audited cost report stating costs associated with services and ~~PAD[injectable drugs]~~ provided

during the state fiscal year spanning July 1, 2017, through June 30, 2018, shall be submitted to the department by December 31, 2018.

(2) By October 1 following the department's receipt of a CMHC's completed cost report submitted to the department by the prior December 31, the department shall:

(a) Review the cost report referenced in subsection (1)(a) of this section; and

(b) Compare the Medicaid allowable costs to the department's interim reimbursement for Medicaid-covered services and ~~PAD[injectable drugs]~~ rendered during the same state fiscal year.

(3)(a) After the department compares a CMHC's interim reimbursement with the CMHC's Medicaid allowable costs for the period, if the department determines that the interim reimbursement:

1. Was less than the CMHC's Medicaid allowable costs for the period, the department shall send a payment to the CMHC equal to the difference between the CMHC's total interim reimbursement and the CMHC's Medicaid allowable costs; or

2. Exceeded the CMHC's Medicaid allowable costs for the period, the:

a. Department shall send written notification to the CMHC requesting the amount of the overpayment; and

b. CMHC shall, within thirty (30) calendar days of receiving the department's written notice, send a:

(i) Payment to the department equal to the excessive amount; or

(ii) Payment plan request to the department.

(b) A CMHC shall not implement a payment plan unless the department has approved the payment plan in writing.

(c) If a CMHC fails to comply with the requirements established in paragraph (a)2 of this subsection, the department shall:

1. Suspend payment to the CMHC; and

2. Recoup the amount owed by the CMHC to the department.

Section 6. Final Reimbursement for the Cost Report Period Spanning November 1, 2016, through June 30, 2017. The provisions established in Section 5 of this administrative regulation shall apply to final reimbursement for the period beginning November 1, 2016, through June 30, 2017, except that the cost report period shall begin November 1, 2016, and end June 30, 2017.

Section 7. New Services. (1) Reimbursement regarding a projection of the cost of a new Medicaid-covered service or expansion shall be made on a prospective basis in that the costs of the new service or expansion shall be considered when actually incurred as an allowable cost.

(2)(a) A CMHC may request an adjustment to an interim rate after reaching the mid-year point of the new service or expansion.

(b) An adjustment shall be based on actual costs incurred.

Section 8. Auditing and Accounting Records. (1)(a) The department shall perform a desk review of each cost report to determine if an audit is necessary and, if so, the scope of the audit.

(b) If the department determines that an audit is not necessary, the cost report shall be settled without an audit.

(c) A desk review or audit shall be used to verify costs to be used in setting the interim behavioral health services rate, to adjust interim behavioral health services rates that have been set based on unaudited data, or for final settlement to cost.

(2)(a) A CMHC shall maintain and make available any records and data necessary to justify and document:

1. Costs to the CMHC;

2. Services provided by the CMHC;

3. The cost of ~~PAD[injectable drugs]~~ provided, if any, by the CMHC;

4. Cost allocations utilized including overhead statistics and supportive documentation;

5. Any amount reported on the cost report; and

6. Chart of accounts.

(b) The department shall have unlimited on-site access to all of a CMHC's fiscal and service records for the purpose of:

1. Accounting;



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2. Auditing;
3. Medical review;
4. Utilization control; or
5. Program planning.

(3) A CMHC shall maintain an acceptable accounting system to account for the:

- (a) Cost of total services provided;
- (b) Charges for total services rendered; and

(c) Charges for covered services rendered to eligible recipients.

(4) An overpayment discovered as a result of an audit or desk review shall be settled through recoupment or withholding.

Section 9. Allowable and Nonallowable Costs. (1) The following shall be allowable costs:

(a) Services' or drugs' costs associated with the services or drugs;

(b) Depreciation as follows:

1. A straight line method shall be used;
2. The edition of the American Hospital Association's useful life guidelines currently used by the Centers for Medicare and Medicaid Services' Medicare program shall be used;
3. The maximum amount for expensing an item in a single cost report shall be \$5,000; and
4. Only the depreciation of assets actually being used to provide services shall be recognized;

(c) Interest costs;

(d) Costs incurred for research purposes, which shall be allowable to the extent that the research costs are related to usual patient services and are not covered by separate research funding;

(e) Costs of motor vehicles used by management personnel up to \$25,000;

(f) Costs for training or educational purposes for licensed professional staff outside of Kentucky excluding transportation costs to travel to the training or education;

(g) Costs associated with any necessary legal expense incurred in the normal administration of the CMHC;

(h) The cost of administrative staff salaries, which shall be limited to the average salary for the given position as established for the geographic area on [www.salary.com](http://www.salary.com);

(i) The cost of practitioner salaries, which shall be limited to the median salary for the southern region as reported in the Medical Group Management Association (MGMA) Physician Compensation and Production Survey Report, if available.

1. A per visit amount using MGMA median visits shall be utilized.

2. The most recently available MGMA publication that relates to the cost report period shall be used;

(j) Indirect costs, which shall be:

1. Calculated utilizing the approved federal indirect rate, if the provider has an approved federal indirect rate.

a. A provider shall include in indirect costs on line [one (1)] of the cost report the same category of costs identified as indirect within the approved federal indirect rate supporting documentation.

b. Direct costs shall be those costs identified as direct within the approved federal indirect rate.

c. The federal indirect rate shall be applied to the same category of expenses identified as direct during the federal rate determination; or

2. If the provider does not have a federal indirect rate, those costs of an organization that are not specifically identified with a particular project, service, program, or activity but nevertheless are necessary to the general operation of the organization and the conduct of the activities it performs. The actual allowable cost of indirect services as reported on the cost report shall be allocated to direct cost centers based on accumulated cost if a federal indirect rate is not available; and

(k) Services provided in leased or donated space outside the walls of the facility.

(2) To be allowable, costs shall comply with reasonable cost principles established in 42 C.F.R. 413.

(3) The allowable cost for a service or good purchased by a facility from a related organization shall be in accordance with 42

C.F.R. 413.17.

(4)(a) The following shall not be allowable costs:

1. Bad debt;
2. Charity;
3. Courtesy allowances;
4. Political contributions;
5. Costs associated with an unsuccessful lawsuit against the department or the Cabinet for Health and Family Services;
6. Costs associated with any legal expense incurred related to a judgment granted as a result of an unlawful activity or pursuit;
7. The value of services provided by nonpaid workers;
8. Travel or related costs or expenses associated with nonlicensed staff attending:
  - a. A convention;
  - b. A meeting;
  - c. An assembly; or
  - d. A conference;
9. Costs related to lobbying;
10. Costs related to outreach services; or
11. Costs incurred for transporting recipients to services.

(b) Outreach services' costs shall either be directly assigned or allocated to a cost report line that is not cost-settled by the department.

(5) A discount or other allowance received regarding the purchase of a good or service shall be deducted from the cost of the good or service for cost reporting purposes, including in-kind donations.

(6)(a) Maximum allowable costs shall be the maximum amount that may be allowed as reasonable cost for the provision of a service or drug.

(b) To be considered allowable, a cost shall:

1. Be necessary and appropriate for providing services; and
2. Not exceed usual and customary charges.

(7) For direct and indirect personnel costs, 100 percent time reporting methods shall be utilized to group and report expenses to each cost category. Detailed documentation shall be available upon request.

Section 10. Units of Service. (1) Interim payments for behavioral health services, physician services, physical therapy services, occupational therapy services, speech-language pathology services, laboratory services, or radiological services shall be based on units of service.

(2) A unit for a behavioral health service, a physician service, a physical therapy service, a speech-language pathology service, an occupational therapy service, a laboratory service, or a radiological service shall be the amount indicated for the corresponding:

(a)[4-] CPT code; or

(b)[2-] Healthcare Common Procedure Coding System code.

Section 11. Reimbursement of Out-of-state Providers. Reimbursement to a participating out-of-state community mental health center shall be the lesser of the:

(1) Charges for the service;

(2) Facility's rate as set by the state Medicaid Program in the other state; or

(3) The state-wide average of payments for in-state community mental health centers.

Section 12. Appeal Rights. A community mental health center may appeal a Department for Medicaid Services decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 13. Not Applicable to Managed Care Organization. A managed care organization shall not be required to reimburse for community mental health center services in accordance with this administrative regulation.

Section 14. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the

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reimbursement; and

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

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, [donna.little@ky.gov](mailto:donna.little@ky.gov); or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions and requirements regarding community mental health center services provided to Medicaid recipients who are not enrolled with a managed care organization.

(b) The necessity of this administrative regulation: 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 205.6313(4) requires the cabinet to promulgate an administrative regulation to implement Medicaid reimbursement for primary care practitioners at community mental health centers.

(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's reimbursement provisions and requirements regarding community mental health center services, including for those services provided by primary care practitioners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding community mental health center services.

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

(a) How the amendment will change this existing administrative regulation: The amendment includes changes to conform with the pharmacy related administrative regulation package filed March 31, 2017, including deleting the definition of "injectable drug"; adding definitions of "physician administered drug" or "PAD" and "rebateable"; and requiring that the department's interim reimbursement for the cost of physician administered drugs in a CMHC shall be the reimbursement methodology established in 907 KAR 23:020. Additional changes include amending the definition of "community mental health center", correcting citations, and making other drafting and formatting changes to comply with KRS Chapter 13A. The Amended After Comments version makes two (2) additional changes: it amends the definition of "community mental health center" to go back to the previous definition, which cites to the requirements established in 902 KAR 20:091, and corrects a drafting mistake in a reference to a line in a cost report.

(b) The necessity of the amendment to this administrative regulation: The Centers for Medicare and Medicaid Services (CMS) has issued the Medicaid Program; Covered Outpatient Drugs (COD); Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447. State Medicaid agencies must comply with the new COD Final Rule by submitting a State Plan Amendment effective no later than April 1, 2017 followed by necessary regulatory changes. The pharmacy related administrative regulation package was filed on March 31, 2017. The amendment to this administrative regulation is necessary to align this administrative regulation with 907 KAR Chapter 23, and to avoid conflicting provisions between administrative regulations. Additionally, the Amended After Comments changes were necessary to respond to comments received during the public comment process and for clarity.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding community mental health center services, including for those services provided by primary care practitioners.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding community mental health center services. It will also assist in the administration of the authorizing statutes by addressing inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The fourteen (14) community mental health centers will be affected by the amendment as will physicians, physician assistants, and advanced practice registered nurses who wish to provide primary care services in a CMHC.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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: They will need to follow the reimbursement methodology established in 907 KAR 23:020 for interim reimbursement for the cost of physician administered drugs in a community mental health center, rather than the current requirements for injectable drug reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs experienced by affected providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In complying with 907 KAR 23:020, as required by the amendment to this administrative regulation, applicable providers will benefit by receiving a true drug ingredient cost based reimbursement along with a professional dispensing fee from DMS for dispensing covered outpatient drugs to Medicaid recipients who are not enrolled with a managed care organization. The main benefit of complying with this administrative regulation that will accrue to the identified entities is a lack of confusion as this amendment removes inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

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

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs 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: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

CABINET FOR HEALTH AND FAMILY SERVICES  
 Department for Medicaid Services  
 Division of Policy and Operations  
 (Amended After Comments)

1. What 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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313, 42 U.S.C. 1396a

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? There are no costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs 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. Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule), constitutes the federal mandate for 907 KAR 23:020. The changes to this administrative regulation are needed to avoid conflicting provisions between this administrative regulation and 907 KAR 23:020.

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." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

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). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards.

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.

907 KAR 1:047. Community mental health center primary care services.

RELATES TO: KRS 205.520, 205.622, 205.8451(9), ~~210.370-210.485~~[210.440], 319A.010(3), (4), 327.010(2), 334A.020(3), 369.101 – 369.120, 42 C.F.R. 400.203, 431.17, 438.2, 493, 45 C.F.R. 164, 42 U.S.C.12101 et seq., 1396r-8(a)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313(4)[, 42 C.F.R. 440.130, 42 U.S.C. 1396d(a)(13)(C)]

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. KRS 205.6313(4) requires the cabinet to promulgate administrative regulations to implement Medicaid reimbursement for primary care practitioners at community mental health centers. This administrative regulation establishes the Medicaid Program's coverage provisions and requirements regarding primary care services provided in a community mental health center to Medicaid recipients.

Section 1. Definitions. (1) "CLIA" means the Clinical Laboratory Improvement Amendments, 42 C.F.R. Part 493.

(2) "Community mental health center" or "CMHC" means a facility that meets the community mental health center requirements established in 902 KAR 20:091[~~provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485~~][meets the community mental health center requirements established in 902 KAR 20:091].

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

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

(5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) [~~Infectable drug~~] means an injectable, infused, or inhaled drug or biological that:

- (a) Is not excluded as a noncovered immunization or vaccine;
- (b) Requires special handling, storage, shipping, dosing, or administration; and
- (c) Is a rebatable drug.

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

(8) [(8)] "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) [(9)] "Occupational therapist" is defined by KRS 319A.010(3).

(10) [(10)] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(11) [(11)] "Physical therapist" is defined by KRS 327.010(2).

(12) [(12)] "Physical therapist assistant" means a skilled health care worker who:

- (a) Is certified by the Kentucky Board of Physical Therapy; and
- (b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(13) "Physician administered drug" or "PAD" means any rebatable covered outpatient drug that is:

- (a) Provided or administered to a Medicaid recipient;
- (b) Billed by a provider other than a pharmacy provider through the medical benefit, including providers who are physician offices or another outpatient clinical setting; and
- (c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

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(13) "~~Rebateable~~Rebateable drug" means a drug for which the ~~drug~~drug's manufacturer has entered into and has in effect~~(or complied with)~~ a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(14) "Recipient" is defined by KRS 205.8451(9).

(15) "Speech-language pathologist" is defined by KRS 334A.020(3).

(16) "Speech-language pathology clinical fellow" means an individual who is recognized by the American Speech-Language-Hearing Association as a speech-language pathology clinical fellow.

Section 2. General Requirements. (1) For the department to reimburse for a primary care service provided by a community mental health center under this administrative regulation, the:

(a) CMHC shall be currently:

1. Enrolled in the Medicaid Program in accordance with 907 KAR 1:672;

2. Participating in the Medicaid Program in accordance with 907 KAR 1:671; and

3. Licensed in accordance with 902 KAR 20:091; and

(b) Service shall:

1. Be medically necessary;

2. Meet the coverage and related requirements established in this administrative regulation; and

3. Be provided by an individual who is currently licensed or certified in accordance with the respective Kentucky licensure or certification Kentucky Revised Statute or administrative regulation to provide the given service.

(2) In accordance with 907 KAR 17:015, Section 3(3), a CMHC that provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A CMHC shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the act.

Section 3. Covered Services and ~~PAD~~Injectable Drugs. (1)(a) Primary care services provided by a community mental health center and covered under this administrative regulation shall include:

1. Physician services;

2. Laboratory services if the CMHC is certified under CLIA to perform laboratory services;

3. Radiological services;

4. Occupational therapy;

5. Physical therapy; and

6. Speech-language pathology services.

(b) ~~PAD~~An injectable drug listed on the Physician Injectable Drug List that is administered in a CMHC shall be covered in accordance with 907 KAR 23:010~~(under this administrative regulation)~~.

(2)(a) The coverage of:

1. Physician services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005;

2. Laboratory services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005; and

3. Radiological services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005.

(b) Occupational therapy provided by a community mental health center shall be covered under this administrative regulation if provided by an:

1. Occupational therapist; or

2. Occupational therapy assistant who renders services under supervision in accordance with 201 KAR 28:130.

(c) Physical therapy provided by a community mental health center shall be covered under this administrative regulation if provided by a:

1. Physical therapist; or

2. Physical therapist assistant who renders services under supervision in accordance with 201 KAR 22:053.

(d) Speech-language pathology services provided by a community mental health center shall be covered under this administrative regulation if provided by a:

1. Speech-language pathologist; or

2. Speech-language pathology clinical fellow who renders services under the supervision of a speech-language pathologist.

Section 4. Service Limitations. (1) The limitations established in 907 KAR 3:005 regarding:

(a) Physician services shall apply to physician services provided by a community mental health center;

(b) Laboratory services shall apply to laboratory services provided by a community mental health center; and

(c) Radiological services shall apply to radiological services provided by a community mental health center.

(2)(a) Except as established in paragraph (b) of this subsection, the limitations and coverage requirements established in 907 KAR 8:040 regarding occupational therapy, physical therapy, and speech-language pathology services shall apply to occupational therapy, physical therapy, and speech-language pathology services provided by a community mental health center.

(b) The provision in 907 KAR 8:040 establishing that the eligible providers of occupational therapy, physical therapy, or speech-language pathology services shall be any of the following shall not apply to a community mental health center:

1. An adult day health care program;

2. A multi-therapy agency;

3. A comprehensive outpatient rehabilitation facility;

4. A mobile health service;

5. A special health clinic; or

6. A rehabilitation agency.

Section 5. Prior Authorization Requirements. (1)(a) Except for the prior authorization requirements regarding occupational therapy, physical therapy, and speech-language pathology services and except as established in paragraph (b) of this subsection, the prior authorization requirements established in 907 KAR 3:005 for physician services, laboratory services, and radiological services shall apply to physician services, laboratory services, and radiological services provided by a CMHC under this administrative regulation.

(b) The prior authorization requirements established in 907 KAR 3:005 shall not apply to services provided to recipients who are enrolled with a managed care organization.

(2) The prior authorization requirements established in 907 KAR 8:040 regarding occupational therapy, physical therapy, and speech-language pathology services shall apply to occupational therapy, physical therapy, and speech-language pathology services provided by a community mental health center.

Section 6. Duplication of Service Prohibited. (1) The department shall not reimburse for a primary care service provided to a recipient by more than one (1) provider of any program in which primary care services are covered during the same time period.

(2) For example, if a recipient is receiving a primary care service from a rural health clinic enrolled with the Medicaid Program, the department shall not reimburse for the same primary care service provided to the same recipient during the same time period by a community mental health center.

Section 7. Records Maintenance, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

(2) A health record shall document each service provided to the recipient, including the date of the service and the signature of the individual who provided the service.

(3) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of the date that the individual provided the service.

(4)(a) Except as established in paragraph (b) of this

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subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) 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 8. Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department or a managed care organization, regardless of reason, the provider shall return the payment to the department or managed care organization 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 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. 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 11. Auditing Authority. The department or managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

(3) Documentation associated with any claim or health record.

Section 12. 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 13. Appeal Rights. (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. ~~Section 14. Incorporation by Reference. (1) The "Physician Injectable Drug List", April 1, 2016, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:~~

~~(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or~~

~~(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.]~~

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, [donna.little@ky.gov](mailto:donna.little@ky.gov); or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid Program's coverage provisions and requirements regarding primary care services provided in a community mental health center to Medicaid recipients.

(b) The necessity of this administrative regulation: 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 205.6313(4) requires the cabinet to promulgate an administrative regulation to implement Medicaid reimbursement for primary care practitioners at community mental health centers.

(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's coverage provisions and requirements regarding community mental health center services, including for those services provided by primary care practitioners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding community mental health center services.

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

(a) How the amendment will change this existing administrative regulation: The amendment includes changes to conform with the pharmacy related administrative regulation package filed March 31, 2017, including deleting the definition of "injectable drug"; adding definitions of "physician administered drug" or "PAD" and "rebateable"; requiring that physician administered drugs administered in a CMHC shall be covered in accordance with 907 KAR 23:010; and deleting the incorporation by reference of the Physician Injectable Drug List. Additional changes include amending the definition of "community mental health center" to match the definition established in 907 KAR 3:010, and correcting citations and making other drafting and formatting changes to comply with KRS Chapter 13A. The Amended After Comments version makes one (1) additional change: it amends the definition of "community mental health center" to go back to the previous definition, which cites to the requirements established in 902 KAR 20:091.

(b) The necessity of the amendment to this administrative regulation: The Centers for Medicare and Medicaid Services (CMS) has issued the Medicaid Program; Covered Outpatient Drugs (COD); Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447. State Medicaid agencies must comply with the new COD Final Rule by submitting a State Plan Amendment effective no later than April 1,

2017 followed by necessary regulatory changes. The pharmacy related administrative regulation package was filed on March 31, 2017. The amendment to this administrative regulation is necessary to align this administrative regulation with 907 KAR Chapter 23, and to avoid conflicting provisions between administrative regulations. Additionally, the Amended After Comments change was necessary to respond to comments received during the public comment process.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding community mental health center services, including for those services provided by primary care practitioners.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding community mental health center services. It will also assist in the administration of the authorizing statutes by addressing inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The fourteen (14) community mental health centers will be affected by the amendment as will physicians, physician assistants, and advanced practice registered nurses who wish to provide primary care services in a CMHC. Additionally, Medicaid recipients who receive services from a CMHC 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: They will need to follow the coverage provisions established in 907 KAR 23:010 for physician administered drugs administered in a CMHC, rather than the current requirements for injectable drug reimbursement.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit that will accrue to the identified entities is a lack of confusion as this amendment removes inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

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

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs 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: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? There are no costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs 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. Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule), constitutes the federal mandate for 907 KAR 23:010. The changes to this administrative regulation are needed to avoid conflicting provisions between this administrative regulation and 907 KAR 23:010.

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." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

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). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards or Medicaid coverage of outpatient drugs.

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 Medicaid Services**  
**Division of Policy and Operations**  
**(Amended After Comments)**

**907 KAR 1:479. Durable medical equipment covered benefits and reimbursement.**

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. Part 414, 424.57, 440.230, [441 Subpart B,] 45 C.F.R. Part 160, 162.1002, Part 164, 42 U.S.C. 1320d, 1395m, 1395w-4, 1396d(i)(1)-(4), 1395m(a)(20)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396a, b, d, 2010 Extra. Sess. Ky. Acts ch. 1, Part I, G.3.b. (26)

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 for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

Section 1. Definitions. (1) "Certificate of Medical Necessity" or "CMN" means a form required by the department to document medical necessity for durable medical equipment, medical supplies, prosthetics, or orthotics.

(2) "CMS" means the Centers for Medicare and Medicaid Services.

(3) "Covered benefit" or "covered service" means an item of durable medical equipment, a prosthetic, an orthotic, or a medical supply for which coverage is provided by the department.

(4) "Customized" means that an item has been constructed, fitted, or altered to meet the unique medical needs of an individual Medicaid recipient and does not include the assemblage of modular components or the addition of various accessories that do not require unique construction, fitting, or alteration to individual specifications.

(5) "Date of service" means:

(a) The date the durable medical equipment, prosthetic, orthotic, or supply (DMEPOS) is provided to the recipient;

(b) For mail order DMEPOS, the later of the shipping date or the date the recipient was discharged home from an inpatient hospital stay or nursing facility;

(c) For DMEPOS delivered to a recipient's home immediately subsequent to a hospital inpatient stay, the date of final discharge; or

(d) Up to two (2) calendar days prior to discharge from a hospital or nursing facility if:

1. The item was provided for purposes of fitting or training of the patient;

2. The item is ready for use in the recipient's home; and

3. [No] Billing is not done prior to the date of the recipient's discharge from the facility.

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

(7) "DMEPOS" means durable medical equipment, prosthetics, orthotics, or [and] supplies.

(8) "Durable medical equipment" or "DME" means medical equipment that [which]:

(a) Withstands repeated use;

(b) Is primarily and customarily used to serve a medical purpose;

(c) Is generally not useful to a person in the absence of an illness or injury; and

(d) Is appropriate for use in the home.

(9) ["Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to:

1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u-1;

2. 42 U.S.C. 1396a(a)(52) and 1396r-6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

6. 42 C.F.R. 457.310; and

(b) Has a designated package code of 2, 3, 4, or 5.

(40) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents [represent] procedures or items.

(10)[(44)] "Home" means a place where the recipient resides excluding:

(a) A nursing facility;

(b) A hospital;

(c) An intermediate care facility for individuals with an intellectual disability; or

(d) An institution for mental diseases [individuals with a mental disease] as defined by [in] 42 U.S.C. 1396d(i).

(11)[(42)] "Incidental" means that a medical procedure or service:

(a) Is performed at the same time as a more complex primary procedure or service; and

(b)1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure or service.

(12)[(43)] "Invoice price" means an itemized account of a manufacturer's actual charges that are billed to a supplier for goods or services provided by the manufacturer or distributor.

(13)[(44)] "Medicaid Program DME [Program] Fee Schedule" means a list, located at <http://chfs.ky.gov/dms>, that:

(a) Contains [containing] the current Medicaid maximum allowable amount established by the department for a covered item of durable medical equipment, a prosthetic, an orthotic, or a medical supply; and

(b) Is updated at least quarterly to coincide with the quarterly updates made by the Centers for Medicare and Medicaid Services as required by 42 U.S.C. 1395m and 1395w-4 and 42 C.F.R. Part 414.

(14)[(45)] "Medical supply" means an item that is:

(a) Consumable;

(b) Nonreusable;

(c) Disposable; and

(d) Primarily and customarily used to serve a medical purpose.

(15)[(46)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(16)[(47)] "Medicare accreditation" means having met the quality standards established in 42 U.S.C. 1395m(a)(20).

(17)[(48)] "Mutually exclusive" means that two (2) DMEPOS items:

(a) Are not reasonably provided in conjunction with each other [one another] during the same patient encounter on the same date of service;

(b) Represent duplicate or very similar items; or

(c) Represent medically inappropriate use of HCPCS codes.

(18)[(49)] "Nutritional supplement" means a liquid or powder administered enterally or orally that is specially formulated to supply complete diagnosis-appropriate nutrition, including kilocalories, protein, vitamins, and minerals.

(19)[(29)] "Orthotic" means a mechanical device or brace that is designed to support or correct a defect or deformity or to improve the function of a movable part of the body.

(20)[(24)] "Prescriber" means a physician, podiatrist, optometrist, dentist, advanced practice registered nurse, physician [physician's] assistant, or chiropractor who:

(a) Is acting within the legal scope of clinical practice under the licensing laws of the state in which the health care provider's medical practice is located;

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(b) If the individual is an enrolled Kentucky Medicaid provider, in compliance with all requirements of:

1. 907 KAR 1:671; and
2. 907 KAR 1:672;

(c) Is in good standing with the appropriate licensure board and CMS; and

(d) Has the legal authority to write an order for a medically necessary~~[medically-necessary]~~ item of durable medical equipment, a medical supply, a prosthetic, or an orthotic for a recipient.

~~(21)~~~~(22)~~ "Prior authorization" means approval ~~that~~~~[which]~~ a supplier shall obtain from the department before being reimbursed.

~~(22)~~~~(23)~~ "Prosthetic" means an item that replaces all or part of the function of a body part or organ.

~~(23)~~~~(24)~~ "Reasonableness" means:

(a) The expense of the item does not exceed the therapeutic benefits ~~that~~~~[which]~~ could ordinarily be derived from use of the item;

(b) The item is not substantially more costly than a medically-appropriate alternative; and

(c) The item does not serve the same purpose as an item already available to the recipient.

~~(24)~~~~(25)~~ "Supplier" means a Medicare-certified provider of durable medical equipment, medical supplies, prosthetics, or orthotics who is enrolled in the Kentucky Medicaid Program.

~~(25)~~~~(26)~~ "Usual and customary charge" means the uniform amount that a supplier bills to the general public for a specific covered benefit.

Section 2. General Coverage. (1)~~(a)~~ Except as provided in subsection (2)~~(b)~~ of this section, coverage for an item of durable medical equipment, a medical supply, a prosthetic, or an orthotic shall:

~~(a)~~~~[1-]~~ Be based on medical necessity and reasonableness;

~~(b)~~~~[2-]~~ Be clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

~~(c)~~~~[3-]~~ Require prior authorization in accordance with Section 7 of this administrative regulation;

~~(d)~~~~[4-]~~ Be provided in compliance with 42 C.F.R. 440.230(c); and

~~(e)~~~~[5-]~~ Be restricted to an item used primarily in the home. ~~[(b) Coverage of prosthetic devices shall not exceed \$1,500 per twelve (12) month period per member of the family choices benefit plan.]~~

~~(2)~~~~[Unless otherwise established in this administrative regulation;]~~(a) Except as provided in paragraph (b) of this subsection, the criteria referenced in subsection (1)~~(a)~~ of this section that was in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(b) If criteria referenced in subsection (1)~~(a)~~ of this section does not exist or is unavailable for a given item or service, the Medicare criteria in effect on the date the durable medical equipment, prosthetic, orthotic, or medical supply is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).

(3) Unless specifically exempted by the department, a DME item, medical supply, prosthetic, or orthotic shall require a CMN that shall be kept on file by the supplier for the period of time mandated by 45 C.F.R. 164.316.

(4) An item for which a CMN is not required shall require a prescriber's written order.

(5) If Medicare is the primary payor for a recipient who is dually eligible for both Medicare and Medicaid, the supplier shall comply with Medicare's CMN requirement and a separate Medicaid CMN shall not be required.

(6) A required CMN shall be:

(a) The appropriate Medicare CMN in use at the time the item or service is prescribed;

(b) A MAP-1000, Certificate of Medical Necessity, Durable Medical Equipment; or

(c) A MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and Foods.

(7) A CMN shall contain:

(a) The recipient's name and address;

(b) A complete description of the item or service ordered;

(c) The recipient's diagnosis;

(d) The expected start date of the order;

(e) The length of the recipient's need for the item;

(f) The medical necessity for the item;

(g) The prescriber's name, address, telephone number, and National Provider Identifier (NPI), if applicable; and

(h) The prescriber's signature and date of signature.

(8) Except as specified in subsections (9) and (10) of this section, a prescriber shall examine a recipient within sixty (60) calendar days prior to the initial order of a DME item, medical supply, prosthetic, or orthotic.

(9) Except as specified in subsection (11) of this section, a prescriber shall not be required to examine a recipient prior to subsequent orders for the same DME item, medical supply, prosthetic, or orthotic unless there is a change in the order.

(10) A prescriber shall not be required to examine a recipient prior to the repair of a DME item, prosthetic, or orthotic.

(11) A change in supplier shall require a new CMN signed and dated by a prescriber who shall have seen the recipient within sixty (60) calendar days prior to the order.

(12) A CMN shall be updated with each request for prior authorization.

(13) The department shall only purchase a new DME item.

(14) A new DME item that is placed with a recipient initially as a rental item shall be considered a new item by the department at the time of purchase.

(15) A used DME item that is placed with a recipient initially as a rental item shall be replaced by the supplier with a new item prior to purchase by the department.

(16) A supplier shall not bill Medicaid for a DME item, medical supply, prosthetic, or orthotic before the item is provided to the recipient.

(17) A supplier shall not ship supplies to a recipient unless the supplier has:

(a) First had direct contact with the recipient or the recipient's caregiver; and

(b) Verified:

1. That the recipient wishes to receive the shipment of supplies;

2. The quantity of supplies in the shipment; and

3. Whether or not there has been a change in the use of the supply.

(18) A verification referenced in subsection (17) of this section for each recipient shall be documented in a file regarding the recipient.

(19) If a supplier ships more than a one (1) month supply of an item, the supplier shall assume the financial risk of nonpayment if the recipient's Medicaid eligibility lapses or a HCPCS code is discontinued.

(20) A supplier shall have an order from a prescriber before dispensing any DMEPOS item to a recipient.

(21) A supplier shall have a written order on file prior to submitting a claim for reimbursement.

Section 3. Purchase or Rental of Durable Medical Equipment. (1) Except as established on the Medicaid Program DME Fee Schedule~~[The following items shall be covered for purchase only:~~

~~(a) A cane;~~

~~(b) Crutches;~~

~~(c) A standard walker;~~

~~(d) A prone or supine stander;~~

~~(e) A noninvasive electric osteogenesis stimulator; or~~

~~(f) Other items designated as purchase only in the Medicaid DME Program Fee Schedule.~~

~~(2) The following items shall be covered for rental only:~~

~~(a) An apnea monitor;~~

~~(b) A respiratory assist device having bivalve pressure capability with backup rate feature;~~



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- (c) A ventilator;
- (d) A negative pressure wound therapy electric pump;
- (e) An electric breast pump;
- (f) The following oxygen systems:
  1. Oxygen concentrator;
  2. Stationary compressed gas oxygen;
  3. Portable gaseous oxygen;
  4. Portable liquid oxygen; or
  5. Stationary liquid oxygen; or
- (g) Other items designated as rental only in the Medicaid DME Program Fee Schedule.

(3) With the exception of items specified in subsections (1) or (2) of this section, durable medical equipment shall be covered through purchase or rental based upon anticipated duration of medical necessity.

(2)(4)(a) A MAP 1001 [MAP 1001] form shall be completed if a recipient requests an item or service not covered by the department.

(b) A recipient shall be financially responsible for an item or service requested by the recipient via a MAP 1001 that is not covered by the department.

(c) A MAP 1001 shall be completed as follows:

1. The DME supplier shall ensure that the recipient or authorized representative reads and understands the MAP 1001;
2. The recipient or authorized representative shall indicate on the MAP 1001 if the recipient chooses to receive a noncovered service;
3. The DME supplier shall complete the supplier information on the MAP 1001;
4. The DME supplier shall provide a copy of the completed MAP 1001 to the recipient; and
5. The DME supplier shall maintain the completed MAP 1001 on file for at least the period of time mandated by 45 C.F.R. 164.316.

(d) If an item or service was denied due to the supplier not meeting the timeframes to obtain a prior authorization or the item or service does not meet medical necessity for a prior authorization, the MAP 1001 shall not be used to obligate the recipient for payment.

Section 4. Special Coverage. (1) An augmentative communication device or other electronic speech aid shall be covered for a recipient who is permanently unable to communicate through oral speech if:

(a) Medical necessity is established based on a review by the department of an evaluation and recommendation submitted by a speech-language pathologist; and

(b) The item is prior authorized by the department.

(2) A customized DME item shall be covered only if a noncustomized medically appropriate equivalent is not commercially available.

(3) A physical therapy or occupational therapy evaluation shall be required for:

(a) A power wheelchair; or

(b) A wheelchair for a recipient who, due to a medical condition, is unable to be reasonably accommodated by a standard wheelchair.

(4) Orthopedic shoes and attachments shall be covered if medically necessary for:

(a) A congenital defect or deformity;

(b) A deformity due to injury; or

(c) Use as a brace attachment.

(5) A therapeutic shoe or boot shall be covered if medically necessary to treat a nonhealing wound, ulcer, or lesion of the foot.

(6) An enteral or oral nutritional supplement shall be covered if:

(a) The item is prescribed by a licensed prescriber;

(b) Except for an amino acid modified preparation or a low-protein modified food product specified in subsection (7) of this section, it is the total source of a recipient's daily intake of nutrients;

(c) The item is prior authorized; and

(d) Nutritional intake is documented on the CMN.

(7) An amino acid modified preparation or a low-protein

modified food product shall be covered:

(a) If prescribed ~~by a physician~~ for the treatment of an inherited metabolic condition specified in KRS 205.560(1)(c);

(b) If not covered through the Medicaid outpatient pharmacy program;

(c) Regardless of whether it is the sole source of nutrition; and

(d) If the item is prior authorized.

(8) A DME item intended to be used for postdischarge rehabilitation in the home may be delivered to a hospitalized recipient within two (2) calendar days prior to discharge home for the purpose of rehabilitative training.

(9) An electric breast pump shall be covered for the following:

(a) Medical separation of mother and infant;

(b) Inability of an infant to nurse normally due to a significant feeding problem; or

(c) An illness or injury that interferes with effective breast feeding.

(10) Rental of an airway clearance vest system for a three (3) month trial period shall be required before purchase of the equipment.

Section 5. Coverage of Repairs and Replacement of Equipment. (1) The department shall not be responsible for repair or replacement of a DME item, prosthetic, or orthotic if the repair or replacement is covered by a warranty.

(2) Reasonable repair to a purchased DME item, prosthetic, or orthotic shall be covered ~~as follows~~:

(a) During a period of medical need;

(b) If necessary to make the item serviceable;

(c) If ~~a~~ warranty is not in effect on the requested repair; and

(d) In accordance with Section ~~6(3)(6(2))~~ of this administrative regulation.

(3) Extensive maintenance to purchased equipment, as recommended by the manufacturer and performed by an authorized technician ~~technicians~~, shall be considered to be a repair.

(4) The replacement of a medically necessary DME item, medical supply, prosthetic, or orthotic shall be covered for the following:

(a) Loss of the item;

(b) Irreparable damage or wear; or

(c) A change in a recipient's condition that requires a change in equipment.

(5) Suspected malicious damage, culpable neglect, or wrongful disposition of a DME item, medical supply, prosthetic, or orthotic shall be reported by the supplier to the department if the supplier is requesting prior authorization for replacement of the item.

Section 6. Limitations on Coverage. (1) The following items shall be excluded from Medicaid coverage through the DME Program:

(a) An item covered for Medicaid payment through another Medicaid program;

(b) Equipment that is not primarily and customarily used for a medical purpose;

(c) Physical fitness equipment;

(d) Equipment used primarily for the convenience of the recipient or caregiver;

(e) A home modification;

(f) Routine maintenance of DME that includes:

1. Testing;

2. Cleaning;

3. Regulating; and

4. Assessing the recipient's equipment;

(g) Except as specified in Section 7(1)(j) of this administrative regulation, backup equipment; or

(h) An item determined not medically necessary, clinically appropriate, or reasonable by the department.

(2) Except if Medicare is the primary payer, the following diabetic supplies (HCPCS codes) shall be covered as a pharmacy benefit at the point of sale:

(a) A4206, a syringe with needle (sterile, 1cc or less);

(b) A4250, urine test or reagent strips or tablets;

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- (c) A4252, blood ketone test or reagent strip;
- (d) A4253, blood glucose test or reagent strips;
- (e) A4256, calibrating solutions;
- (f) A4258, lancet device;
- (g) A4259, lancets; or
- (h) E0607, home blood glucose monitor[-; or
- (i) Diabetic supplies, except for:
  1. Those for which Medicare is the primary payor;
  2. Those with an HCPCS code of A4210, A4250, A4252, A4253, A4256, A4258, A4259, E0607 or E2100; or
  3. Those with a HCPCS code of A4206 if a diagnosis of diabetes is present on the corresponding claim.
- (3)(2) An estimated repair shall not be covered if the repair cost equals or exceeds:
  - (a) The purchase price of a replacement item; or
  - (b) The total reimbursement amount for renting a replacement item of equipment for the estimated remaining period of medical need.
- (4)(3) Durable medical equipment, prosthetics, orthotics, and medical supplies shall be included in the facility reimbursement for a recipient residing in a hospital, nursing facility, or intermediate care facility or institution for individuals with an intellectual or developmental disability[-; or an institution for individuals with a mental disease and shall not be covered through the durable medical equipment program].

Section 7. Prior Authorization Requirements and Process. (1) Prior authorization shall be required for the following:

- (a) An item or repair billed to the department at \$500 or more;
  - (b) Rental of equipment as indicated on the Medicaid Program DME[Program] Fee Schedule excluding oxygen services after twelve (12) continuous months of service;
  - (c) Orthopedic shoes;
  - (d) An adjustment to a prosthetic or orthotic;
  - (e) An augmentative communication device;
  - (f) A customized DME item;
  - (g) A replacement DME item, prosthetic, or orthotic if replacement is prior to the:
    1. Usual and customary lifetime of the item; or
    2. Limitation set by the department as indicated in the Medicaid Program DME[Program] Fee Schedule;
  - (h) A nutritional supplement;
  - (i) An amino acid modified preparation or a low-protein modified food product;
  - (j) A loaner item for a member-owned piece of equipment that is being repaired;
  - (k) A DMEPOS item denoted by a general or nonspecific HCPCS code;
  - (l) An item designated on the Medicaid Program DME[Program] Fee Schedule as requiring prior authorization;
  - (m) An item that[which] exceeds the quantity limitation established[set] in the Medicaid Program DME[Program] Fee Schedule; or
  - (n) An item designated by an[a] HCPCS code not indicated on the Medicaid Program DME[Program] Fee Schedule that is determined by the department to be a covered benefit.
- (2)(a) If an item requires prior authorization, a supplier shall:
1. a. Submit all required documentation prior to the date of service; or
    - b. Within one (1) year from the date of service with department approval;
  2. Submit a written request to the department for prior authorization, which shall include the prescriber's order; and
  3. Submit a completed CMN to the department within ninety (90) business days of the date of the request for prior authorization[-; and]
- (b) If the required prior authorization submittals required by paragraph (a) of this subsection are not submitted within the established time frames, the prior authorization request shall be denied.
- (3) If an item requires an evaluation or recommendation by a specialist, the evaluation or recommendation shall be in writing and submitted with the CMN.

(4) The supplier shall not bill a recipient for a DME item, medical supply, prosthetic, or orthotic if the supplier has not completed the prior authorization process within the timeframe specified in subsection (2) of this section.

(5) If a supplier provides an item that requires prior authorization before the prior authorization is received, the supplier shall assume the financial risk that the prior authorization might[may] not be subsequently approved.

(6) A supplier may initially obtain a faxed CMN from a prescriber to expedite the prior authorization process, but a signed, original CMN subsequently shall be required.

(7) A supplier shall request prior authorization by mailing, faxing, or electronically submitting the following information to the department:

- (a) A completed prior authorization form MAP-9;
  - (b) A completed CMN; and
  - (c) If requested by the department, additional information required to establish medical necessity, clinical appropriateness, or reasonableness.
- (8) The following additional information shall be required for prior authorization of a customized item:
- (a) An estimate of the fitting time;
  - (b) An estimate of the fabrication time;
  - (c) A description of the materials used in customizing the item; and
  - (d) An itemized estimate of the cost of the item, including the cost of labor.

(9) The following additional information shall be required for prior authorization of a repair to purchased equipment:

- (a) A description of the nature of the repair;
- (b) An itemization of the parts required for the repair;
- (c) An itemization of the labor time involved in the repair; and
- (d) A copy of the manufacturer's warranty indicating the purchase date or a written notice from the DME supplier stating that the requested repair is not covered by the warranty.

(10) An item shall be prior authorized based on:

- (a) Medical necessity and the corresponding prior-authorized period of medical necessity; and
- (b)1. Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or

2. Medicare criteria if the criteria referenced in subparagraph 1. of this paragraph does not exist or is unavailable.

(11) A prior authorization period shall[may] be extended upon the provision of a new CMN indicating current medical necessity and:

- (a) Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or
- (b) Medicare criteria if the criteria referenced in paragraph (a) of this subsection does not exist or is unavailable.

(12)(a) Prior authorization by the department shall not:

1. Be a guarantee of recipient eligibility; or
  2. Guarantee reimbursement.
- (b) Eligibility verification shall be the responsibility of the supplier.

(13) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

(14) If it is determined by the department to be in the best interest of Medicaid recipients, the department may[shall have the authority to] designate that an item of durable medical equipment suitable for use in the home may be provided, if prior authorized, to a recipient temporarily residing in a hospital that does not bill patients, Medicaid, or other third-party payers for any health care services.

(15)(a) For purposes of obtaining prior authorization, a signed invoice price quote from the manufacturer shall be acceptable documentation.

(b) If the invoice price differs from the manufacturer's invoice price quote, the supplier shall amend the prior authorization and shall maintain documentation of the quote and the invoice.

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Section 8. Reimbursement for Covered Services. (1) Except for an item specified in subsections (2) and (5) of this section, a new item that is purchased shall be reimbursed at the lesser of:

(a) The supplier's usual and customary charge for the item;

(b) The purchase price specified in the Medicaid Program DME[Program] Fee Schedule; or

(c) If indicated in the Medicaid Program DME[Program] Fee Schedule as manually priced,[-

~~1.] invoice price plus twenty (20) percent for an item not utilizing a billing code[specified in subparagraph 2 or 3 of this paragraph;~~

~~2. The manufacturer's suggested retail price minus fifteen (15) percent for HCPCS codes E1037 through E1039, E1161, E1220, E1229, E1231 through E1238, or K0009; or~~

~~3. The manufacturer's suggested retail price minus twenty-two (22) percent for a customized component billed using HCPCS codes E0955 through E0957, E0960, E1002 through E1010, E1015, E1028 through E1030, E2201 through E2204, E2300, E2301, E2310, E2311, E2321 through E2330, E2340 through E2343, E2373 through E2376, E2381 through E2392, E2394 through E2397, E2601 through E2621, K0108, K0669, K0734 through K0737, or L8499].~~

(2) Pursuant to 45 C.F.R. 162.1002, the department shall recognize U.S. Department for Health and Human Services quarterly HCPCS code updates.

(a) An item denoted by an[a] HCPCS code not currently on the Medicaid Program DME[Program] Fee Schedule that has been determined by the department to be a covered service shall be manually priced using the actual invoice price plus twenty (20) percent.

(b)1. The department shall post HCPCS code change information on its Web site accessible at <http://chfs.ky.gov/dms>.

2. The information may also be obtained by writing the Department for Medicaid Services at 275 East Main Street, Frankfort, Kentucky 40621.

(3) If a copayment is required, copayment provisions, including any provider deduction, shall be as established in 907 KAR 1:604.

(4) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006.

(5) Reimbursement for the purchase of an item that has been rented for less than ten (10) months shall be the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier.

(6) A rental item shall be reimbursed as follows, but reimbursement shall not exceed the supplier's usual and customary charge for the item:

(a) The rental price specified in the Medicaid Program DME[Program] Fee Schedule; or

(b) If indicated in the Medicaid Program DME[Program] Fee Schedule as manually priced:

1. Ten (10) percent of the purchase price per month for the monthly rental of an item; or

2. Two and one-half (2.5) percent of the purchase price per week for the weekly rental of an item that is needed for less than one (1) month.

~~(7)[Except for an item specified in Section 3(2) of this administrative regulation,] If reimbursement for a rental item has been made for a period of ten (10) consecutive months, the item shall be considered to be purchased and shall become the property of the recipient.~~

(8) Labor costs for a repair shall be billed in quarter hour increments using the HCPCS codes for labor specified in the Medicaid Program DME[Program] Fee Schedule and shall be reimbursed the lessor of:

(a) The supplier's usual and customary charge; or

(b) The reimbursement rate specified in the Medicaid Program DME[Program] Fee Schedule.

(9) Reimbursement shall include instruction and training provided to the recipient by the supplier.

(10) The rental price of an item shall include rental of the item and the cost of:

(a) Shipping and handling;

(b) Delivery and pickup;

(c) Setup;

(d) Routine maintenance; and

(e) Essential medical supplies required for proper use of the equipment.

(11) The purchase price of a prosthetic or orthotic shall include:

(a) Acquisition cost and applicable design and construction;

(b) Required visits with a prosthetist or orthotist prior to receipt of the item;

(c) Proper fitting and adjustment of the item for a period of one (1) year;

(d) Required modification, if not a result of physical growth or excessive change in stump size, for a period of one (1) year; and

(e) A warranty covering defects in material and workmanship.

Section 9. Conditions for Provider Participation. A participating DME provider shall:

(1) Have an active Medicare DME provider number;

(2) Adhere to all CMS supplier standards in accordance with 42 C.F.R. 424.57;

(3)(a) Provide proof of Medicare accreditation, by an approved Medicare accreditation entity, to the department every three (3) years unless exempt from Medicare accreditation by CMS; or

(b) If exempt from Medicare accreditation by CMS, provide a letter to the department on company letterhead that indicates the CMS exemption status;

(4) Be enrolled in the Kentucky Medicaid Program in accordance with:

(a) 907 KAR 1:671; and

(b) 907 KAR 1:672;

(5) Comply with the requirements regarding the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164; and

(6) Comply with the following:

(a) A supplier shall bill Medicaid rather than a recipient for a covered service;

(b) A supplier shall not bill a recipient for a service that is denied by the department on the basis that the service is incidental to, or mutually exclusive with, a covered service; and

(c) A supplier may bill a recipient for a service not covered by Medicaid if the provider[se] informed the recipient of noncoverage prior to providing the service.

Section 10. Managed Care Organizations and Reimbursement. A managed care organization shall not be required to reimburse the same amount as the department reimburses for a service or item covered pursuant to this administrative regulation.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage and re-imbursement.

Section 12. Appeal Rights. (1) If an individual is denied prior authorization for DMEPOS based upon an application of this administrative regulation, the DME supplier involved in the prior authorization request may appeal the denial. To appeal the denial, the DME supplier shall submit to the department, within thirty (30) calendar days of the prior authorization denial, a written request, by mail or fax, for a reconsideration review.

(2) Upon receipt of a reconsideration request and any supporting documentation, the department shall:

(a) Conduct a reconsideration review within thirty (30) calendar days from the receipt of the request;

(b) Base the reconsideration review decision solely upon information that is:

1. Contained in the individual's medical records; and

2. Submitted with the written request pursuant to subsection (1) of this section; and

(c) Issue a notification of approval or denial within five (5)

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working days of a reconsideration review.

(3) If an outcome of a services reconsideration review results in a denial, the department shall grant an appeal.

(4) An appeal of a department decision regarding a Medicaid recipient who is:

(a) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(b) Not enrolled with a managed care organization~~[based upon an application of this administrative regulation]~~ shall be in accordance with 907 KAR 1:563.

~~(5) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 4:560.~~

~~(6) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.~~

Section 13[44]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ~~["]Form MAP-9, "Prior Authorization for Health Services[Form]", July 2010[edition, Department for Medicaid Services];~~

(b) ~~["]Form MAP-1000, "Certificate of Medical Necessity, Durable Medical Equipment", July 2010[edition, Department for Medicaid Services];~~

(c) ~~["]Form MAP-1000B, "Certificate of Medical Necessity, Metabolic Formulas and Foods", July 2010 edition[, Department for Medicaid Services]; and~~

(d) ~~["Medicaid DME Program Fee Schedule", November 3, 2010 edition; and~~

~~(e) -"]Form MAP 1001, "Advance Member Notice", September 2006[edition].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) ~~[-] At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or~~

(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov)

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, [donna.little@ky.gov](mailto:donna.little@ky.gov); or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(b) The necessity of this administrative regulation: 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.

(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 provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(2) If 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 includes changes to conform with the pharmacy related administrative regulation package filed March 31, 2017, including specifying the diabetic supplies and corresponding HCPCS codes that shall be covered as a pharmacy benefit at the point of sale. Additionally, the amendment deletes provisions that referenced the family choices benefit plan, which was removed from the Medicaid Program in 2014; provides that durable medical equipment shall be covered through purchase or rental based upon anticipated duration of medical necessity and except as established on the Medicaid Program DME Fee Schedule, rather than listing in the administrative regulation each item that shall be covered for purchase only and each item covered for rental only; and provides that if indicated on the fee schedule as manually priced, the reimbursement shall be invoice price plus twenty (20) percent for an item not utilizing a billing code, and deleting the listing of HCPCS codes that had a different reimbursement rate. Additionally, the amendment inserts regulatory boilerplate language that an MCO is not required to reimburse the same amount as the department reimburses for a service or item covered pursuant to this administrative regulation and that reimbursement is contingent upon federal approval and federal financial participation; deletes the incorporation by reference of the Medicaid Program DME Fee Schedule; and corrects citations and makes other drafting and formatting changes to comply with KRS Chapter 13A. The Amended After Comment version deletes the phrase "by a physician" to clarify that an amino acid modified preparation or a low-protein modified food product may be prescribed by other professionals within their scope of practice.

(b) The necessity of the amendment to this administrative regulation: The Centers for Medicare and Medicaid Services (CMS) has issued the Medicaid Program; Covered Outpatient Drugs (COD); Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447. State Medicaid agencies must comply with the new COD Final Rule by submitting a State Plan Amendment effective no later than April 1, 2017 followed by necessary regulatory changes. The pharmacy related administrative regulation package was filed on March 31, 2017. The amendment to this administrative regulation is necessary to align this administrative regulation with 907 KAR Chapter 23, and to avoid conflicting provisions between administrative regulations. Additionally, the Amended After Comments change was necessary to respond to comments received during the public comment process.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics. It will also assist in the administration of the authorizing statutes by addressing inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects DME providers enrolled in the Medicaid program. DMS estimates that 2,896 DME providers are enrolled in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Diabetic supplies and corresponding HCPCS codes shall be covered as a pharmacy benefit at the point of sale. Additionally, if indicated on the fee schedule as manually

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priced, the reimbursement shall be invoice price plus twenty (20) percent for an item not utilizing a billing code.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit that will accrue to the identified entities is a lack of confusion as this amendment removes inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

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

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs 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: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3)

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no costs 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. Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule), constitutes the federal mandate for 907 KAR 23:010. The changes to this administrative regulation are needed to avoid conflicting provisions between this administrative regulation and 907 KAR Chapter 23.

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

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). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards or Medicaid coverage of outpatient drugs.

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 Medicaid Services  
Division of Policy and Operations  
(Amended After Comments)

907 KAR 3:005. Coverage of physicians' services.

RELATES TO: KRS 205.510, 205.520, 205.560, 205.622, 205.8451, 311.840-311.862, 314.011, 369.101-369.120, 42 C.F.R. 400.203, 413.75(b)[445-452], 415.174, 415.184, 431.17, 438.2, 440.40(b), 440.50, 441.200-441.208, 441.250-441.259, 447.26, 455.410, Part 493, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320 - 1320d-8, 1396a(a)(19), (30), 1396r-8(a)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)

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. This administrative regulation establishes the Medicaid Program coverage provisions and requirements relating to physicians' services.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Behavioral health practitioner under supervision" means an individual who is:

- (a) 1. A licensed psychological associate;
- 2. ~~(b)~~ A licensed professional counselor associate;
- 3. ~~(c)~~ A certified social worker;
- 4. ~~(d)~~ A marriage and family therapy associate;
- 5. ~~(e)~~ A licensed professional art therapist associate;
- 6. ~~(f)~~ A licensed assistant behavior analyst;

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### 7. A licensed clinical alcohol and drug counselor associate:

8. A certified psychologist[(g) A physician assistant working under the supervision of a physician]; or

### 9. [(h)] A certified alcohol and drug counselor; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(3) "Common practice" means an arrangement through which a physician assistant administers health care services under the supervision of a physician via a supervisory relationship that has been approved by the Kentucky Board of Medical Licensure.

(4) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

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

(6) "Designated controlled substance provider" means the provider designated as a lock-in recipient's controlled substance prescriber:

(a) Pursuant to 907 KAR 1:677, if the recipient is not an enrollee; or

(b) As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.

(7) "Designated primary care provider" means the provider designated as a lock-in recipient's primary care provider:

(a) Pursuant to 907 KAR 1:677, if the recipient is not an enrollee; or

(b) As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.

(8) "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(9) "Early and periodic screening and diagnosis and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b).

(10) "Emergency care" means:

(a) Covered inpatient or outpatient services furnished by a qualified provider that are needed to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; or

(b) Emergency ambulance transport.

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

(12) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(13) "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(14) "Graduate medical education program" or "GME program" means:

(a) A residency program approved by:

1. The Accreditation Council for Graduate Medical Education of the American Medical Association;

2. The Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association;

3. The Commission on Dental Accreditation of the American Dental Association; or

4. The Council on Podiatric Medicine Education of the American Podiatric Medical Association; or

(b) An approved medical residency program as defined by[in] 42 C.F.R. 413.75(b).

(15) "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and

(b) 1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure.

(16) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(17) "Lock-in recipient" means:

(a) A recipient enrolled in the lock-in program in accordance with 907 KAR 1:677; or

(b) An enrollee enrolled in a managed care organization's lock-in program pursuant to 907 KAR 17:020, Section 8.

(18) "Locum tenens APRN" means an APRN:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are billed under the APRN's provider number.

(19) "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

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

(21) "Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient as a Medicaid-participating provider in accordance with:

1. 907 KAR 1:671; and

2. 907 KAR 1:672;

(b) The Medicaid Program is the payer for the service; and

(c) The recipient is not liable for payment to the provider for the service other than any cost sharing obligation owed by the recipient to the provider.

(22) "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(23) "Medical resident" means:

(a) An individual who participates in an approved graduate medical education (GME) program in medicine or osteopathy; or

(b) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, including:

1. An individual with a:

a. Temporary license;

b. Resident training license; or

c. Restricted license; or

2. An unlicensed graduate of a foreign medical school.

(24) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with each other[one another] during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(25) "Non-Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient;

(b) The Medicaid Program is not the payer for the service; and

(c) The recipient is liable for payment to the provider for the service.

(26) "Other licensed medical professional" means a health care provider:

(a) Other than a physician, physician assistant, advanced practice registered nurse, certified registered nurse anesthetist, nurse midwife, or registered nurse; and

(b) Who has been approved to practice a medical specialty by the appropriate licensure board.

(27) "Other provider preventable condition" is defined by[in] 42 C.F.R. 447.26(b).

(28) "Physician administered drug" or "PAD" means any rebateable covered outpatient drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

(29) "Physician assistant" is defined by[in] KRS 311.840(3).

[(29) "Physician injectable drug" means an injectable, infused,

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or inhaled drug or biological that:

- (a) Is not typically self-administered;
  - (b) Is not excluded as a noncovered immunization or vaccine;
  - (c) Requires special handling, storage, shipping, dosing, or administration; and
  - (d) Is a rebatable drug.]
- (30) "Podiatrist" is defined by KRS 205.510(12).
- (31) "Provider group" means a group of at least [2] two (2) individually licensed physicians who:
- ~~(a) Are enrolled with the Medicaid Program individually and as a group; and~~
  - ~~(b) [2.] Share the same Medicaid group provider number [; or~~
  - ~~(b) One (1) APRN and at least one (1) physician who:~~
- ~~1. Are enrolled with the Medicaid Program individually and as a group; and~~
- ~~2. Share the same Medicaid group provider number.]~~
- (32) "~~Rebateable~~[Rebatable drug]" means a drug for which the ~~drug~~[drug-s] manufacturer has entered into and has in effect[~~or complied with~~] a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).
- (33) "Recipient" is defined by KRS 205.8451(9).
- (34) "Screening" means the evaluation of a recipient by a physician to determine:
- (a) If a disease or medical condition is present; and
  - (b) If further evaluation, diagnostic testing, or treatment is needed.
- (35) "Supervising physician" is defined by[~~in~~] KRS 311.840(4).
- (36) "Supervision" is defined by[~~in~~] KRS 311.840(6).
- (37) "Timely filing" means receipt of a Medicaid claim by the department:
- (a) Within twelve (12) months of the date the service was provided;
  - (b) Within twelve (12) months of the date retroactive eligibility was established; or
  - (c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.
- (38) "Unlisted procedure or service" means a procedure or service:
- (a) For which there is not a specific CPT code; and
  - (b) ~~That~~[Which] is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Conditions of Participation. (1)(a) A participating physician shall:

- 1. Be licensed as a physician in the state in which the medical practice is located;
  - 2. Comply with the:
    - a. Terms and conditions established in 907 KAR 1:005, 907 KAR 1:671, and 907 KAR 1:672; and
    - b. Requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164;
  - 3. Have the freedom to choose whether to provide services to a recipient; and
  - 4. Notify the recipient referenced in paragraph (b) of this subsection of the provider's decision to accept or not accept the recipient on a Medicaid basis prior to providing any service to the recipient.
- (b) A provider may provide a service to a recipient on a non-Medicaid basis:
- 1. If the recipient agrees to receive the service on a non-Medicaid basis before the service begins; and
  - 2. The service is not a Medicaid-covered service.
- (c) 1. If a provider renders a Medicaid-covered service to a recipient, regardless of if the service is billed through the provider's Medicaid provider number or any other entity including a non-Medicaid provider, the recipient shall not be billed for the service.
2. The department shall terminate from Medicaid Program participation a provider who participates in an arrangement in which an entity bills a recipient for a Medicaid-covered service rendered by the provider.
- (2) If a provider agrees to provide services to a recipient, the provider:

- (a) Shall bill the department rather than the recipient for a covered service;
  - (b) May bill the recipient for a service not covered by Medicaid if the physician informed the recipient of noncoverage prior to providing the service; and
  - (c) Shall not bill the recipient for a service that is denied by the department on the basis of:
    - 1. The service being incidental, integral, or mutually exclusive to a covered service or within the global period for a covered service;
    - 2. Incorrect billing procedures, including incorrect bundling of services;
    - 3. Failure to obtain prior authorization for the service; or
    - 4. Failure to meet timely filing requirements.
- (3)(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.
- (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.
- (4)(a) A provider shall maintain a current health record for each recipient.
- (b) 1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.
2. The individual who provided the service shall date and sign the health record within seventy-two (72) hours from the date that the individual provided the service.
- (5)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.
- (b) 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.
- (6) A provider shall comply with 45 C.F.R. Part 164.

Section 3. Covered Services. (1) To be covered by the department, a service shall be:

- (a) Medically necessary;
  - (b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;
  - (c) Except as provided in subsection (2) of this section, furnished to a recipient through direct physician contact; and
  - (d) Eligible for reimbursement as a physician service.
- (2) Direct physician contact between the billing physician and recipient shall not be required for:
- (a) A service provided by a:
    - 1. Medical resident if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.174 and 415.184;
    - 2. Locum tenens physician who provides direct physician contact;
    - 3. Physician assistant in accordance with Section 7 of this administrative regulation; or
    - 4. Locum tenens APRN who provides direct APRN contact;
  - (b) A radiology service, imaging service, in office lab, pathology service, ultrasound study, echographic study, electrocardiogram, electromyogram, electroencephalogram, vascular study, or other service that is usually and customarily performed without direct physician contact;
  - (c) The telephone analysis of emergency medical systems or a cardiac pacemaker if provided under physician direction;
  - (d) A sleep disorder service; or
  - (e) A telehealth consultation provided in accordance with 907 KAR 3:170.
- (3) A service provided by an other licensed medical professional shall be covered if the other licensed medical professional is:

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- (a) Employed by the supervising physician; and
- (b) Licensed in the state of practice.
- (4) A sleep disorder service shall be covered if performed in:
  - (a) A hospital; or
  - (b) A sleep laboratory if the sleep laboratory has documentation demonstrating that it complies with criteria approved by the:
    - 1. American Sleep Disorders Association; or
    - 2. American Academy of Sleep Medicine]; or
- ~~(c) An independent diagnostic testing facility that:
  - 1. Is supervised by a physician trained in analyzing and interpreting sleep disorder recordings; and
  - 2. Has documentation demonstrating that it complies with criteria approved by the:
    - a. American Sleep Disorders Association; or
    - b. American Academy of Sleep Medicine].~~

Section 4. Service Limitations. (1) A covered service provided to a lock-in recipient shall be limited to a service provided by the lock-in recipient's designated primary care provider or designated controlled substance provider[~~prescriber~~] unless:

- (a) The service represents emergency care; or
  - (b) The lock-in recipient has been referred to the provider by the lock-in recipient's designated primary care provider.
- (2) An EPSDT screening service shall be covered in accordance with 907 KAR 11:034.
- (3) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 42 C.F.R. Part 493.
- (4) ~~A [An injectable] drug listed on the Physician Administered [Injectable] Drug List [that is administered by a physician, APRN, or provider group] shall be covered in accordance with 907 KAR 23:010.~~

(5) A service allowed in accordance with 42 C.F.R. 441, Subpart E (441.200 to 441.208) or Subpart F (441.250 to 441.259 and the Appendix to Subpart F), shall be covered within the scope and limitations of 42 C.F.R. 441, Subpart E and Subpart F.

(6)(a) Except as provided in paragraph (b) of this subsection, coverage for a service designated as a psychiatry service CPT code and provided by a physician shall be limited to four (4) services, per physician, per recipient, per twelve (12) months.

(b) Coverage for a service designated as a psychiatry service CPT code that is provided by a board certified or board eligible psychiatrist or by an advanced practice registered nurse with a specialty in psychiatry shall not be subject to the limits established in paragraph (a) of this subsection.

~~(7)[(e)]~~ Coverage for an evaluation and management service shall be limited to one (1) per physician, per recipient, per date of service.

~~(8)[(d)]~~ Coverage for a fetal diagnostic ultrasound procedure shall be limited to two (2) per nine (9) month period per recipient unless the diagnosis code justifies the medical necessity of an additional procedure.

~~(9)[(7)]~~ An anesthesia service shall be covered if:

- (a) Administered by:
  - 1. An anesthesiologist who remains in attendance throughout the procedure; or
  - 2. An individual who:
    - a. Is licensed in Kentucky to practice anesthesia;
    - b. Is licensed in Kentucky within his or her scope of practice; and

- c. Remains in attendance throughout the procedure;
- (b) Medically necessary; and
- (c) Not provided as part of an all-inclusive CPT code.

~~(10)[(8)]~~ The following shall not be covered:

- (a) An acupuncture service;
- (b) An autopsy;
- (c) A cast or splint application in excess of the limits established in 907 KAR 3:010;
- (d) Except for therapeutic bandage lenses, contact lenses;
- (e) A hysterectomy performed for the purpose of sterilization;
- (f) Lasik surgery;
- (g) Paternity testing;

- (h) A procedure performed for cosmetic purposes only;
- (i) A procedure performed to promote or improve fertility;
- (j) Radial keratotomy;
- (k) A thermogram;
- (l) An experimental service ~~that~~[which] is not in accordance with current standards of medical practice;
- (m) A service ~~that~~[which] does not meet the requirements established in Section 3(1) of this administrative regulation;
- (n) Medical direction of an anesthesia service; or
- (o) Medical assistance for an other provider preventable condition in accordance with 907 KAR 14:005.

~~(11)[(9)]~~(a) In accordance with 42 C.F.R. 455.410, to prescribe medication, order a service for a recipient, or refer a recipient for a service, a provider shall be currently enrolled and participating in the Medicaid program.

- (b) The department shall not reimburse for a:
  - 1. Prescription prescribed by a provider that is not currently:
    - a. Participating in the Medicaid program pursuant to 907 KAR 1:671; and
    - b. Enrolled in the Medicaid program pursuant to 907 KAR 1:672; or
  - 2. Service:
    - a. Ordered by a provider that is not currently:
      - (i) Participating in the Medicaid program pursuant to 907 KAR 1:671; and
      - (ii) Enrolled in the Medicaid program pursuant to 907 KAR 1:672; or
    - b. Referred by a provider that is not currently:
      - (i) Participating in the Medicaid program pursuant to 907 KAR 1:671; and
      - (ii) Enrolled in the Medicaid program pursuant to 907 KAR 1:672.

Section 5. Prior Authorization Requirements for Recipients Who are Not Enrolled with a Managed Care Organization. (1) Except as provided by subsection (3) of this section, the following procedures for a recipient who is not enrolled with a managed care organization shall require prior authorization by the department:

- (a) Magnetic resonance imaging;
- (b) Magnetic resonance angiogram;
- (c) Magnetic resonance spectroscopy;
- (d) Positron emission tomography;
- (e) Cineradiography or videoradiography;
- (f) Xeroradiography;
- (g) Ultrasound subsequent to second obstetric ultrasound;
- (h) Myocardial imaging;
- (i) Cardiac blood pool imaging;
- (j) Radiopharmaceutical procedures;
- (k) Gastric restrictive surgery or gastric bypass surgery;
- (l) A procedure that is commonly performed for cosmetic purposes;

(m) A surgical procedure that requires completion of a federal consent form;~~[e]~~

- (n) An organ transplant in accordance with 907 KAR 1:350; or
- (o) A covered unlisted procedure or service.

(2)(a) Prior authorization by the department shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the provider.

(3) The prior authorization requirements established in subsection (1) of this section shall not apply to:

- (a) An emergency service;
- (b) A radiology procedure if the recipient has a cancer or transplant diagnosis code; or
- (c) A service provided to a recipient in an observation bed.

(4) A referring physician, a physician who wishes to provide a given service, a podiatrist, a chiropractor, or an advanced practice registered nurse:

- (a) May request prior authorization from the department; and
- (b) If requesting prior authorization, shall request prior authorization by:
  - 1. Mailing or faxing:
    - a. A written request to the department with information



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sufficient to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation; and

- b. If applicable, any required federal consent forms; or
- 2. Submitting a request via the department's web-based portal with information sufficient to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation.

Section 6. Therapy Service Limits. (1) Speech-language pathology services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(2) Physical therapy services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(3) Occupational therapy services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(4) A service in excess of the limits established in subsection (1), (2), or (3) of this section shall be:

(a) Prior authorized in accordance with subsection (5) of this section if the recipient is not enrolled with a managed care organization; and

(b) Approved if the additional service is determined to be medically necessary by:

- 1. The department, if the recipient is not enrolled with a managed care organization; or
- 2. The managed care organization in which the enrollee is enrolled, if the recipient is an enrollee.

(5) Prior authorization by the department shall be required for each service visit that exceeds the limit established in subsection (1), (2), or (3) of this section for a recipient who is not enrolled with a managed care organization.

Section 7. Physician Assistant Services. (1) Except for a service limitation specified in subsection (2) or (3) of this section, a service provided by a physician assistant in common practice with a Medicaid-enrolled physician shall be covered if:

(a) The service meets the requirements established in Section 3(1) of this administrative regulation;

(b) The service is within the legal scope of certification of the physician assistant;

**(c) The service is approved in the contractual supervisory relationship between the physician assistant, their supervising physician, and the Kentucky Board of Medical Licensure; and**

~~(d)(c) The service is billed under the physician's individual provider number with the physician assistant's number included; and~~

- (d) The physician assistant complies with:
  - 1. KRS 311.840 to 311.862; and
  - 2. If applicable, Section 2(1)(b) of this administrative regulation.

(2) A same service performed by a physician and either a physician assistant or an APRN on the same day within a common practice shall be considered as one (1) covered service.

(3) The following physician assistant services shall not be covered:

- (a) A physician noncovered service specified in Section ~~4(10)~~~~4(8)~~ of this administrative regulation;
- (b) An anesthesia service;
- (c) An obstetrical delivery service; or
- (d) A service provided in assistance of surgery.

Section 8. Behavioral Health Services Covered Pursuant to 907 KAR 15:010. The requirements and provisions established in 907 KAR 15:010 for a service covered pursuant to this administrative regulation and 907 KAR 15:010 shall apply if the service is provided by:

- (1) A physician who is the billing provider;
- (2) A provider group that is the billing provider; or
- (3) A behavioral health practitioner under supervision who works for a:
  - (a) Physician who is the billing provider; or

(b) Provider group that is the billing provider.

Section 9.~~[Ne]~~ Duplication of Service Prohibited. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for the same service provided to the same recipient during the same time period via the physicians' services program.

Section 10. Third Party Liability. A provider shall comply with KRS 205.622.

Section 11. 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 12. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with the claim or medical record.

Section 13. 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 14. Appeal Rights. An appeal of a department decision regarding:

(1) A Medicaid recipient who is not enrolled with a managed care organization based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563; or

(2) An enrollee based upon an application of this administrative regulation shall be in accordance with 907 KAR 17:010. ~~[Section 15. Incorporation by Reference. (1) The "Physician Injectable Drug List", February 21, 2014, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:~~

~~(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or~~

~~(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.]~~

STEPHEN P. MILLER, Commissioner  
VICKIE YATES BROWN GLISSON, Secretary  
APPROVED BY AGENCY: October 12, 2017  
FILED WITH LRC: October 13, 2017 at 10 a.m.  
CONTACT PERSON: Laura Begin, Legislative and Regulatory

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Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email Laura.Begin@ky.gov

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid Program coverage provisions and requirements relating to physicians' services.

(b) The necessity of this administrative regulation: 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.

(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 Medicaid Program coverage provisions and requirements relating to physicians' 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 authorizing statutes by establishing the Medicaid Program coverage provisions and requirements relating to physicians' services.

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

(a) How the amendment will change this existing administrative regulation: The amendment includes changes to conform with the pharmacy related administrative regulation package filed March 31, 2017, including adding definitions of "physician administered drug" or "PAD" and "rebateable"; deleting the definition of "physician injectable drug"; providing that a drug listed on the Physician Administered Drug List shall be covered in accordance with 907 KAR 23:010; and deleting the incorporation by reference of the Physician Injectable Drug List. Additionally, the amendment amends the definition of "behavioral health practitioner under supervision" to match the definition established in 907 KAR 15:005; provides that direct physician contact between the billing physician and recipient shall not be required for an in office lab; deletes coverage provisions for a sleep disorder service performed in an independent diagnostic testing facility, leaving coverage for sleep disorder services performed in a hospital or in a sleep laboratory that meets specific criteria; adds to the list of procedures requiring prior authorization by the department for a recipient who is not enrolled with a managed care organization an organ transplant in accordance with 907 KAR 1:350; and deletes the requirement that a service provided by a physician assistant in common practice with a Medicaid-enrolled physician be billed under the physician's individual provider number with the physician assistant's number included. Finally, the amendment corrects citations and makes other drafting and formatting changes to comply with KRS Chapter 13A. The Amended After Comments version makes three (3) additional changes. First, it amends the definition of "provider group" to remove the reference to non-physician provider groups as this administrative regulation establishes requirements for physicians' services. Second, it amends Section 7 to clarify the coverage requirements for a service provided by a physician assistant in common practice with a Medicaid-enrolled physician, to add a requirement that the service is approved in the contractual supervisory relationship between the physician assistant, their supervising physician, and the Kentucky Board of Medical Licensure. Lastly, a typographical error in the electronic version on the LRC Web site is being corrected, in order to use a federally-defined term correctly.

(b) The necessity of the amendment to this administrative regulation: The Centers for Medicare and Medicaid Services (CMS) has issued the Medicaid Program; Covered Outpatient Drugs (COD); Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447. State Medicaid agencies must comply with the new COD Final Rule by submitting a State Plan Amendment effective no later

than April 1, 2017 followed by necessary regulatory changes. The pharmacy related administrative regulation package was filed on March 31, 2017. The amendment to this administrative regulation is necessary to align this administrative regulation with 907 KAR Chapter 23, and to avoid conflicting provisions between administrative regulations. Additionally, the Amended After Comments changes were necessary to respond to comments received during the public comment process. The error correction in the electronic version is necessary to comply with KRS 13A.222(4)(e)2.c. and federal law.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid Program coverage provisions and requirements relating to physicians' services.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the Medicaid Program coverage provisions and requirements relating to physicians' services. It will also assist in the administration of the authorizing statutes by addressing inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects physicians enrolled in the Medicaid program. Currently, there are over 14,000 individual physicians and over 1,700 physician group practices participating in the Medicaid Program. Medicaid recipients who receive services will be affected by the amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will need to follow the coverage provisions established in 907 KAR 23:010 for drugs listed on the Physician Administered Drug List and they will need to obtain prior authorization for organ transplants for a recipient who is not enrolled with a managed care organization in accordance with 907 KAR 1:350.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit that will accrue to the identified entities is a lack of confusion as this amendment removes inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

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

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs 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: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment 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? There are no costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs 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. Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule), constitutes the federal mandate for 907 KAR 23:010. The changes to this administrative regulation are needed to avoid conflicting provisions between this administrative regulation and 907 KAR Chapter 23.

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

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). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards or Medicaid coverage of outpatient drugs.

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 Medicaid Services  
Division of Policy and Operations  
(Amended After Comments)

907 KAR 3:010. Reimbursement for physicians' services.

RELATES TO: KRS 205.560, 205.565, 210.370-210.485, 311.840, 42 C.F.R. 400.203, Part 414, 438.2, 440.50, 447.10, 447.200-447.205, 447.325[~~447 Subpart B~~], 42 U.S.C. 1395m, 1395w-4, 1395x(t)(1), 1396a, 1396b, 1396c, 1396d, 1396s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

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[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the method of reimbursement for physicians' services by the Medicaid Program.

Section 1. Definitions. (1) "Add-on code" or "add-on service" means a service designated by a specific CPT code that[which] may be used in conjunction with another CPT code to denote that an adjunctive service has been performed.

(2) "Assistant surgeon" means a physician who attends and acts as an auxiliary to a physician performing a surgical procedure.

(3) "Community mental health center" means a facility that meets the community mental health center requirements established in 902 KAR 20:091[provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485].

(4) [~~"Average wholesale price" or "AWP" means the average wholesale price published in a nationally-recognized comprehensive drug data file for which the department has contracted.~~

(4) "Biological" means the definition of "biologicals" pursuant to 42 U.S.C. 1395x(t)(1).

(5) "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

(5) [(6)] "Department" means the Department for Medicaid Services or its designee.

(6) "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(7) "Drug" means the definition of "drugs" pursuant to 42 U.S.C. 1395x(t)(1).

(8) "Federal financial participation" is defined by 42 C.F.R. 400.203[~~"Established patient" means one who has received professional services from the provider within the past three (3) year period~~].

(9) "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(10) "Healthcare common procedure coding system" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(11) "Incidental" means that a medical procedure;  
(a) Is performed at the same time as a primary procedure; and  
(b)1.:

(a) Requires little[few] additional[physician] resources; or  
2. [(b)] Is clinically integral to the performance of the primary procedure.

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~~(12)~~~~(44)~~ "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

~~(13)~~~~(42)~~ "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

~~(14)~~~~(43)~~ "Major surgery" means a surgical procedure assigned a ninety (90) day global period.

~~(15)~~ "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

~~(16)~~~~(44)~~ "Medicaid Physician Fee Schedule" means a list, located at <http://chfs.ky.gov/dms>, that:

(a) Contains the~~(of)~~ current reimbursement rates for physician services established by the department in accordance with~~(Section 3-of)~~ this administrative regulation; and

(b) Is updated at least quarterly to coincide with the quarterly updates made by the Centers for Medicare and Medicaid Services as required by 42 U.S.C. 1395m and 1395w-4 and 42 C.F.R. Part 414.

~~(17)~~ "Medical direction" means a service provided:

(a) Under direct orders from a physician who is:

1. Not physically present with the recipient during the provision of the service; and

2. Communicating with the service provider during the provision of the service; or

(b) Based on a set of written instructions from a physician who is not physically present with the recipient during the provision of the service.

~~(18)~~~~(45)~~ "Minor surgery" means a surgical procedure assigned a ten (10) day global period.

~~(19)~~~~(46)~~ "Modifier" means a reporting indicator used in conjunction with a CPT code to denote that a medical service or procedure that has been performed has been altered by a specific circumstance while remaining unchanged in its definition or CPT code.

~~(20)~~~~(47)~~ "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with each other~~(one another)~~ during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

~~(21)~~ "Pediatric teaching hospital" is defined by KRS 205.565(1).

~~(22)~~ "Physician administered drug" or "PAD" means any rebateable covered out-patient drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

~~(23)~~~~(48)~~ "Physician assistant" is defined ~~by~~~~(in)~~ KRS 311.840(3).

~~(24)~~~~(49)~~ "Physician group practice" means two (2) or more licensed physicians who have enrolled both individually and as a group and share the same Medicaid group provider number.

~~(20)~~ "Professional component" means the physician service component of a service or procedure that has both a physician service component and a technical component.

~~(25)~~ "Provider group" means a group of at least~~(2)~~:

~~(a)~~ two (2) individually licensed physicians who:

~~(a)~~~~(1)~~ Are enrolled with the Medicaid Program individually and as a group; and

~~(b)~~~~(2)~~ Share the same Medicaid provider number~~(; or~~

~~(b) One (1) physician and at least one (1) APRN who:~~

~~1. Are enrolled with the Medicaid Program individually and as a group; and~~

~~2. Share the same Medicaid provider number.~~

~~(26)~~~~(24)~~ "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code ~~that~~~~(which)~~ takes into consideration the physician's work, practice expense, and liability insurance.

~~(27)~~~~(22)~~ "Resource-based relative value scale" or "RBRVS" means the product of the relative value unit (RVU) and a resource-based dollar conversion factor.

~~(28)~~ "State university teaching hospital" means:

~~(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or~~

~~(b) A hospital:~~

~~1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and that are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and~~

~~2. That does not possess only a residency program or rotation agreement.~~

~~(29)~~~~(23)~~ "Technical component" means the part of a medical procedure performed by a technician, inclusive of all equipment, supplies, and drugs used to perform the procedure.

~~(30)~~~~(24)~~ "Usual and customary charge" means the uniform amount ~~that~~~~(which)~~ a physician charges the general public in the majority of cases for a specific medical procedure or service.

Section 2. Standard Reimbursement. (1) Reimbursement for a covered service shall be made to:

(a) The individual participating physician who provided the covered service; or

(b) The~~(A)~~ physician;

1. In a provider group~~(practice)~~ enrolled in the Kentucky Medicaid Program; and

2. Who provided the covered service.

(2) Except as provided in subsection (3) of this section and Sections 3 through 10 of this administrative regulation~~(subsections (3) to (9) of this section)~~, reimbursement for a covered service shall be the lesser of:

(a) The physician's usual and customary charge; or

(b) The amount specified in the Medicaid Physician Fee Schedule established in accordance with~~(Section 3-of)~~ this administrative regulation.

(3) If there is not an established fee for a listed service in the Medicaid Physician Fee Schedule, the reimbursement shall be forty-five (45) percent of the usual and customary billed charge.

Section 3. Rates Established Using a Relative Value Unit and a Dollar Conversion Factor.

(1) Except for a service specified in Sections 4 through 9 of this administrative regulation:

(a) The rate for a non-anesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and

(b) The rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the number of units spent on that specific procedure (designated as Z). A unit shall equal a fifteen (15) minute increment of time.

(2) The dollar conversion factor shall be:

(a) Fifteen (15) dollars and twenty (20) cents for a nondelivery related anesthesia service; or

(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all non-anesthesia related services.

Section 4. Medicare Part B Covered Services.~~(4)~~ Reimbursement for a service covered under Medicare Part B shall be made in accordance with 907 KAR 1:006, Section 3.

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Section 5. Services with a Modifier.~~(5) If cost-sharing is required for a service to a recipient, the cost-sharing provisions established in 907 KAR 1:604 shall apply.~~

~~(6) Reimbursement for a service denoted by a modifier used in conjunction with a CPT code shall be as established in this section.~~

~~(1) A service reported with a two (2) digit modifier of "51" shall be reimbursed at fifty (50) percent of the fee listed on the Medicaid Physician Fee Schedule for the service.~~

~~(2) follows:~~

~~(a) second anesthesia service provided by a provider to a recipient on the same date of service and reported by the addition of the two (2) digit modifier twenty-three (23) shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code;~~

~~(b) A professional component of a service reported by the addition of the two (2) digit modifier "26" [twenty-six (26)] shall be reimbursed at the product of:~~

~~(a)[4-] The Medicare value assigned to the physician's work; and~~

~~(b)[2-] The dollar conversion factor specified in Section 3(2) of this administrative regulation.~~

~~(3)[- (e)] A technical component of a service reported by the addition of the two (2) letter modifier "TC" shall be reimbursed at the product of:~~

~~(a)[4-] The Medicare value assigned to the practice expense involved in the performance of the procedure; and~~

~~(b)[2-] The dollar conversion factor specified in Section 3(2) of this administrative regulation.~~

~~(4)[- (d)] A bilateral procedure reported by the addition of the two (2) digit modifier "50" [fifty (50)] shall be reimbursed at 150 percent of the amount assigned to the CPT code.~~

~~(5)[- (e)] An assistant surgeon procedure reported by the addition of the two (2) digit modifier "80" [eighty (80)] shall be reimbursed at sixteen (16) percent of the allowable fee for the primary surgeon.~~

~~(6)[- (f)] A procedure performed by a physician acting as a locum tenens physician for a Medicaid-participating physician reported by the addition of the two (2) character modifier "Q6" [Q six (6)] shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code.~~

~~(7) follows:~~

~~(g) An evaluation and management telehealth consultation service provided by a telehealth provider or telehealth practitioner [consulting medical specialist] in accordance with 907 KAR 3:170 and reported by the two (2) letter modifier "GT" shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable evaluation and management CPT code.~~

~~(8) follows:~~

~~(h) A level II national [HCPCS (healthcare common procedure coding system)] modifier designating a location on the body shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable code.~~

Section 6. Laboratory, Venipuncture, and Catheter. (1)[(7)] Except for a service specified in paragraph [paragraphs] (a) or (b) of this subsection, a physician laboratory service shall be reimbursed in accordance with 907 KAR 1:028.

(a) Charges for a laboratory test performed by dipstick or reagent strip or tablet in a physician's office shall be included in the office visit charge.

(b) A routine venipuncture procedure shall not be separately reimbursed if submitted with a charge for an office, hospital, or emergency room visit or in addition to a laboratory test.

~~(2)[(8)] Reimbursement for placement of a central venous, arterial, or subclavian catheter shall be:~~

(a) Included in the fee for the anesthesia if performed by the anesthesiologist;

(b) Included in the fee for the surgery if performed by the surgeon; or

(c) Included in the fee for an office, hospital, or emergency room visit if performed by the same provider.

(3) A laboratory test performed with microscopy shall be reimbursed separately from an evaluation and management CPT

code.

Section 7. Delivery-Related Anesthesia, Anesthesia Add-On Services, Oral Surgery-Related Anesthesia, and Anesthesia Under Medical Direction. (1) The department shall reimburse as follows for the following delivery-related anesthesia services:

(a) For a vaginal delivery, the lesser of:

1. \$215; or

2. The actual billed charge;

(b) For a cesarean section, the lesser of:

1. \$335; or

2. The actual billed charge;

(c) For neuroxial labor anesthesia for a vaginal delivery or cesarean section, the lesser of:

1. \$350; or

2. The actual billed charge;

(d) For an additional anesthesia for cesarean delivery following neuroxial labor anesthesia for vaginal delivery, the lesser of:

1. Twenty-five (25) dollars; or

2. The actual billed charge;

(e) For an additional anesthesia for cesarean hysterectomy following neuroxial labor anesthesia, the lesser of:

1. Twenty-five (25) dollars; or

2. The actual billed charge.

(2) For an anesthesia add-on service provided to a recipient under the age of one (1) year or over the age of seventy (70) years, the department shall reimburse the lesser of:

(a) Twenty-five (25) dollars; or

(b) The actual billed charge.

(3) For deep sedation or general anesthesia relating to oral surgery performed by an oral surgeon, the department shall reimburse the lesser of:

(a) \$150; or

(b) The actual billed charge.

(4) The department shall not reimburse for an anesthesia service if the claim for the service is submitted with a modifier indicating that a service of medical direction was performed.

Section 8. Vaccines. (1) The department shall reimburse administration of a:

(a) Pediatric vaccine to a recipient under the age of nineteen (19) years; or

(b) Flu vaccine to a recipient of any age.

(2)(a) The department shall reimburse for the cost of a vaccine administered to a recipient under nineteen (19) years of age, in addition to administration of the vaccine, for a vaccine that is:

1. Administered to the recipient by a physician; and

2. Not available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

(b) The department shall not reimburse for the cost of a vaccine if the vaccine is available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

Section 9. Physician Assistant.~~(4) Reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this administrative regulation.~~~~(2) Reimbursement for a covered service provided by a physician assistant shall be included in the facility reimbursement if the physician assistant is employed by a primary care center, federally qualified health center, federally qualified health center look-alike, rural health clinic, or community mental health center.~~~~(9) The department shall reimburse a flat rate of seventy-two (72) dollars per office visit for an office visit beginning after 5 p.m. Monday through Friday or beginning after 12 p.m. on Saturday or anytime Sunday.~~

~~Section 3. Reimbursement Methodology.~~ (1) Except for a service specified in subsections (3) through (7) of this section:

(a) The rate for a nonanesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and

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~~(b) The rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the number of units spent on that specific procedure (designated as Z). A unit shall equal a fifteen (15) minute increment of time.~~

~~(2) The dollar conversion factor shall be:~~

~~(a) Fifteen (15) dollars and twenty (20) cents for a nondelivery related anesthesia service; or~~

~~(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all nonanesthesia related services.~~

~~(3) For the following services, reimbursement shall be the lesser of:~~

~~(a) The actual billed charge;~~

~~(b) A fixed fee of three (3) dollars and thirty (30) cents for:~~

~~1. Administration of a pediatric vaccine to a Medicaid recipient under the age of twenty-one (21); or~~

~~2. Administration of a flu vaccine;~~

~~(c) For delivery-related anesthesia services, a fixed rate described as follows:~~

~~1. Vaginal delivery, \$215;~~

~~2. Cesarean section, \$335;~~

~~3. Neuroaxial labor anesthesia for a vaginal delivery or cesarean section, \$350;~~

~~4. Additional anesthesia for cesarean delivery following neuroaxial labor anesthesia for vaginal delivery shall be twenty-five (25) dollars;~~

~~5. Additional anesthesia for cesarean hysterectomy following neuroaxial labor anesthesia shall be twenty-five (25) dollars;~~

~~(d) A fixed rate of twenty-five (25) dollars for anesthesia add-on services provided to a recipient under age one (1) or over age seventy (70); or~~

~~(e) A fixed rate of \$150 for deep sedation or general anesthesia relating to oral surgery performed by an oral surgeon.~~

~~(4) Except as established in subsection (5) or (7)(c) of this section, the department shall reimburse the following drugs at the lesser of the average wholesale price (AWP) minus ten (10) percent of the actual bill charge, or the actual billed charge if the drug is administered in a physician's office.~~

~~(a) Rho (D) immune globulin injection;~~

~~(b) An injectable antineoplastic drug;~~

~~(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;~~

~~(d) Penicillin G benzathine injection;~~

~~(e) Ceftriaxone sodium injection;~~

~~(f) Intravenous immune globulin injection;~~

~~(g) Sodium hyaluronate or hylan G-F for intra-articular injection;~~

~~(h) An intrauterine contraceptive device;~~

~~(i) An implantable contraceptive device;~~

~~(j) Long acting injectable risperidone; or~~

~~(k) An injectable, infused or inhaled drug or biological that:~~

~~1. Is not typically self-administered;~~

~~2. Is not excluded as a noncovered immunization or vaccine; and~~

~~3. Requires special handling, storage, shipping, dosing or administration.~~

~~(5) If long acting injectable risperidone is provided to an individual covered under both Medicaid and Medicare and administered by a physician employed by a community mental health center or other licensed medical professional employed by a community mental health center, the department shall provide reimbursement in an amount that is:~~

~~(a) The same rate it reimburses for these drugs provided to Medicaid recipient; and~~

~~(b) Reduced by the amount of the third party obligation.~~

~~(6) Reimbursement for a covered service provided by a physician assistant shall be:~~

~~(a) Made to the employing physician; or~~

~~(b) Included in the facility reimbursement if the physician assistant is employed by a primary care center, federally qualified health center, rural health clinic, or comprehensive care center.~~

~~(7)(a) Except for an item identified in paragraph (b) of this~~

~~subsection or subsection (5) of this section, reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this section and Section 4 of this administrative regulation.~~

~~(b) Except as established in subsection (5) of this section, the department shall reimburse the following drugs at the lesser of the average wholesale price (AWP) minus ten (10) percent or the actual billed charge, if the drug is administered in a physician's office by a physician assistant:~~

~~1. Rho (D) immune globulin injection;~~

~~2. An injectable antineoplastic drug;~~

~~3. Medroxyprogesterone acetate for contraceptive use, 150 mg;~~

~~4. Penicillin G benzathine injection;~~

~~5. Ceftriaxone sodium injection;~~

~~6. Intravenous immune globulin injection;~~

~~7. Sodium hyaluronate or hylan G-F for intra-articular injection;~~

~~8. An intrauterine contraceptive device;~~

~~9. An implantable contraceptive device;~~

~~10. Long acting injectable risperidone; or~~

~~11. An injectable, infused or inhaled drug or biological:~~

~~a. Is that not typically self-administered;~~

~~b. Is not excluded as a noncovered immunization or vaccine; and~~

~~c. Requires special handling, storage, shipping, dosing or administration[.];~~

Section 10. Reimbursement Limits and Related Requirements.

~~(1)(a) Except for~~(1)(a) Except for~~4. Reimbursement Limitations. (1)(a) With the exception of] chemotherapy administration to a recipient under the age of nineteen (19) years, reimbursement for an evaluation and management service with a corresponding CPT code of 99214 or 99215 shall be limited to two (2) per recipient per provider per calendar year[twelve (12) months].~~

~~(b) A~~[Any] ~~claim for an evaluation and management service with a corresponding CPT code of 99214 or 99215 submitted in excess of the limit established in paragraph (a) of this subsection shall be reimbursed as an evaluation and management service with a corresponding CPT code of 99213.~~

~~(c) A claim for an evaluation and management service of moderate or high complexity in excess of the limit established in paragraph (a) of this subsection shall be reimbursed at the Medicaid rate for the evaluation and management service representing medical decision making of low complexity.~~

~~(2) Reimbursement for an anesthesia service shall include:~~

~~(a) Preoperative and postoperative visits;~~

~~(b) Administration of the anesthetic;~~

~~(c) Administration of fluids and blood incidental to the anesthesia or surgery;~~

~~(d) Postoperative pain management until discharge from the recovery area;~~

~~(e) Preoperative, intraoperative, and postoperative monitoring services; and~~

~~(f) Insertion of arterial and venous catheters.~~

~~(3) With the exception of an anesthetic, contrast, or neurolytic solution, administration of a substance to a recipient by epidural or spinal injection for the control of chronic pain shall be limited to three (3):~~

~~(a) Injections per date of service; and~~

~~(b) Dates of service per six (6) month period[per recipient].~~

~~(4) If related to the surgery and provided by the physician who performs the surgery, reimbursement for a surgical procedure shall include the following:~~

~~(a) A preoperative service;~~

~~(b) An intraoperative service; and~~

~~(c) A postoperative service and follow-up care within:~~

~~1. Ninety (90) calendar days following the date of major surgery; or~~

~~2. Ten (10) calendar days following the date of minor surgery[; and~~

~~(d) A preoperative consultation performed within two (2) days of the date of the surgery].~~

~~(5) Reimbursement for the application of a cast or splint shall~~

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be in accordance with 907 KAR 1:104, Section 3(4)[limited to two (2) per ninety (90) day period for the same injury or condition].

(6)[Reimbursement for the application of a cast or splint associated with a surgical procedure shall be considered to include:

(a) A temporary cast or splint, if applied by the same physician who performed the surgical procedure;

(b) The initial cast or splint applied during or following the surgical procedure; and

(c) A replacement cast or splint needed as a result of the surgical procedure if:

1. Provided within ninety (90) days of the procedure by the same physician; and

2. Applied for the same injury or condition.

(7) Multiple surgical procedures performed by a physician during the same operative session shall be reimbursed as follows:

(a) The major procedure, an add-on code, and other CPT codes approved by the department for billing with units shall be reimbursed in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation; and

(b) The additional surgical procedure shall be reimbursed at fifty (50) percent of the amount determined in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation.

(7)(8) When performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

(8) The department shall not reimburse for an evaluation and management CPT code unless:

(a) Direct physician contact occurred during the visit; or

(b) Direct physician contact is not required in accordance with 907 KAR 3:005, Section 3(2).

Section 11. Other Provider Preventable Conditions. In accordance with 907 KAR 14:005, the department shall not reimburse for other provider preventable conditions(9) Reimbursement shall not be made for the cost of a vaccine that is administered by a physician].

Section 12[5]. Supplemental Payments. (1) In addition to a reimbursement made pursuant to Sections 2 through 10[4] of this administrative regulation, the department shall make a supplemental payment to a medical school faculty physician;

(a) Who:

1. Is licensed to practice medicine or osteopathy in Kentucky;

2. Is enrolled in the Kentucky Medicaid program in accordance with 907 KAR 1:672;

3. Is participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671;

4. Is employed by a state university teaching hospital or pediatric teaching hospital; and

5. Agrees to assign his or her Medicaid reimbursement, in accordance with 42 C.F.R. 447.10, to the state university teaching hospital or pediatric teaching hospital with whom the physician is employed; and

(b) For services provided:

1. Directly by the medical school faculty physician; or

2. By a resident working under the supervision of the medical school faculty physician[employed by a state-supported school of medicine that is part of a university health care system that includes a:

(a) Teaching hospital; and

(b) Pediatric teaching hospital].

(2) A supplemental payment plus other reimbursements made in accordance with this administrative regulation shall:

(a) Not exceed the physician's charge for the service provided; and

(b)[shall] Be paid directly or indirectly to the medical school.

(3) A supplemental payment made in accordance with this section shall be:

(a) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in

subsection (1) of this section;

(b) Consistent with the requirements of 42 C.F.R. 447.325; and

(c) Made on a quarterly basis.

Section 13. The department shall reimburse for physician administered drugs in accordance with 907 KAR 23:020.

Section 14. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse the same amount for physician services as the department does.

(2) A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a physician service reimbursed by the department via this administrative regulation.

Section 15. Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services approval for the reimbursement.

Section 16[6]. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

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

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email Laura.Begin@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov; or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the method of reimbursement for physicians' services by the Medicaid Program.

(b) The necessity of this administrative regulation: 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.

(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 method of reimbursement for physicians' services by the 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 authorizing statutes by establishing the method of reimbursement for physicians' services by the 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 amendment includes changes to conform with the pharmacy related administrative regulation package filed March 31, 2017, including deleting definitions of terms no longer used ("average wholesale price", "AWP", and "biological"); adding definitions of "physician administered drug" or "PAD" and "rebateable"; deleting provisions regarding the reimbursement of

drugs; and specifying that reimbursement for physician administered drugs shall be in accordance with 907 KAR 23:020. Additionally, the amendment updates the definitions to define terms currently used in the administrative regulation; clarifies the standard reimbursement to state that reimbursement for a covered service shall be made to the individual participating physician or the physician in a provider group who provided the covered service; and reorganizes the administrative regulation for clarity by re-arranging the order of provisions. The amendment also establishes that a service reported with a two (2) digit modifier of "51" shall be reimbursed at fifty (50) percent of the fee listed on the Medicaid Physician Fee Schedule for the service; specifies that a laboratory test performed with microscopy shall be reimbursed separately from an evaluation and management CPT code; clarifies the reimbursement limitations for vaccines administered to a Medicaid recipient under age nineteen (19) in order to comply with 42 U.S.C. 1396s; deletes the reimbursement rate for after-hours office visits because after hour codes are now used under CPT and HCPCS codes; and removes a preoperative consultation performed within two (2) days of the date of the surgery from inclusion in the reimbursement for a surgical procedure. Further, the amendment provides that reimbursement for the application of a cast or splint shall be in accordance with 907 KAR 1:104; establishes limitations for reimbursement of evaluation and management service codes; and revises criteria for supplemental payments to a medical school faculty physician. Lastly, the amendment adds regulatory boilerplate language that an MCO is not required to reimburse the same amount as the department reimburses for a service or item covered pursuant to this administrative regulation and that reimbursement is contingent upon federal approval and federal financial participation; and it corrects citations and makes other drafting and formatting changes to comply with KRS Chapter 13A. The Amended After Comments version makes three (3) changes. First, it amends the definition of "community mental health center" to cite to the requirements established in 902 KAR 20:091. Second, it amends the definition of "provider group" to remove the reference to non-physician provider groups as this administrative regulation establishes requirements for physicians' services. Lastly, it amends Section 9 to delete provisions regarding reimbursements included in facility reimbursements because those reimbursements are established in other administrative regulations and should not be established in this administrative regulation governing physicians' services.

(b) The necessity of the amendment to this administrative regulation: The Centers for Medicare and Medicaid Services (CMS) has issued the Medicaid Program; Covered Outpatient Drugs (COD); Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447. State Medicaid agencies must comply with the new COD Final Rule by submitting a State Plan Amendment effective no later than April 1, 2017 followed by necessary regulatory changes. The pharmacy related administrative regulation package was filed on March 31, 2017. The amendment to this administrative regulation is necessary to align this administrative regulation with 907 KAR Chapter 23, and to avoid conflicting provisions between administrative regulations. Additionally, the Amended After Comments changes were necessary to respond to comments received during the public comment process.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid Program reimbursement provisions and requirements relating to physicians' services.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the Medicaid Program reimbursement provisions and requirements relating to physicians' services. It will also assist in the administration of the authorizing statutes by addressing inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this

administrative regulation: The administrative regulation affects physicians enrolled in the Medicaid program. Currently, there are over 14,000 individual physicians and over 1,700 physician group practices participating in the Medicaid Program. Medicaid recipients who receive services will be affected by the amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will need to follow the reimbursement provisions established in 907 KAR 23:020 for drugs listed on the Physician Administered Drug List and they will receive reimbursement based on the amended provisions.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit that will accrue to the identified entities is a lack of confusion as this amendment removes inconsistencies between this administrative regulation and the pharmacy related administrative regulation package filed March 31, 2017.

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

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs 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: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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



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year? There are no costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs 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. Medicaid Program; Covered Outpatient Drugs; Final Rule (CMS-2345-FC) amending 42 C.F.R. Part 447 (the CMS COD Final Rule), constitutes the federal mandate for 907 KAR 23:010. The changes to this administrative regulation are needed to avoid conflicting provisions between this administrative regulation and 907 KAR Chapter 23.

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." The CMS COD Final Rule mandates that the Medicaid Program revise its reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization.

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). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients who are not enrolled with a managed care organization shall not change compliance standards or Medicaid coverage of outpatient drugs.

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 Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:140. Foster care and adoption permanency services.

RELATES TO: KRS 2.015, 199.011(3)(2), (4), (9), 199.462, 199.555, 199.557, 199.801, 387.025, 527.100, 527.110, 600.020(2), (7)(6), (8), 610.110, 610.125, 610.127, 620.020(1), (11), 620.060, 620.090, 620.140, 620.180, 625.040, 625.090, 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.467, 620.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those 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 199.467 requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty four (24) months, and describing the steps to be taken to achieve the goals. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions. (1) "Absent parent search" means cabinet initiated efforts to locate a biological or legal parent, or a relative.

(2) "Age or developmentally appropriate" is defined by KRS 600.020(2).

(3) "Cabinet" is defined by KRS 199.011(3)(2) and 600.020(7)(6).

(4)(3) "Case permanency plan" is defined by KRS 620.020(1).

(5)(4) "Child" means:

(a) A child defined by KRS 199.011(4) and 600.020(9)(8);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(6)(5) "Concurrent planning" means the cabinet simultaneously plans for:

(a) The return of a child in the custody of the cabinet to the child's parent; and

(b) Another permanency goal for the child if return to parent is not achieved within fifteen (15) of the last twenty two (22) months, in accordance with 42 U.S.C. 675(5)(E).

(7)(6) "Fictive kin" is defined by KRS 199.011(9).

(8)(7) "Parent" is defined by 42 U.S.C. 675(2).

(9)(8)(3)(7) "Reasonable efforts" is defined by KRS 620.020(11).

(10)(9)(8) "Relative" means an individual related to a child by blood, marriage, or adoption to a child.

(11)(10)(9) "Sufficient progress" means compliance with case permanency plan objectives that support the safe return of the child to the child's parent.

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception based on overall trends in the foster care population, the maximum number of children who receive foster care in excess of twenty four (24) months shall be 3,000 during a state fiscal year.

Section 3. Permanency Planning. (1) In a court permanency hearing held pursuant to KRS 610.125, the cabinet shall demonstrate that reasonable efforts to return the child to the child's parent:

(a) Have been unsuccessful; or

(b) Are not required under the provisions of KRS 610.127.

(2) A child shall be removed from the child's home if:

(a) An emergency custody order has been obtained pursuant to KRS 620.060;

(b) A temporary custody order has been obtained pursuant to KRS 620.090; or

(c) A court orders the removal pursuant to KRS 620.140(1)(c).

(3) Upon removal of a child from the child's home, placement shall be:

(a) Selected according to the least restrictive appropriate placement available, as required by KRS 620.090(2); and

(b) Closest in proximity to the child's home, in accordance with KRS 199.801.

(4) In the provision of permanency services, the cabinet shall meet the requirements of the:

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(a) Indian Child Welfare Act in accordance with 25 U.S.C. 1901-1963, 42 U.S.C. 671(a)(32), and 42 U.S.C. 1996; or

(b) Multiethnic Placement Act as amended by the Interethnic Adoption Provisions of 1996 in accordance with 42 U.S.C. 622(b)(7), 671(a)(18), and 1996b.

(5) An absent parent search shall:

(a) Be conducted within thirty (30) days of a child entering the custody of the cabinet;

(b) Be conducted to gather as much information as possible related to the person and the person's location, which may include:

1. Date of birth;
2. Social Security number;
3. Present or previous employers; and
4. Present or most recent address; and

(c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist in locating a parent or relative.

(6) If a relative or fictive kin placement is in the best interest of the child, the cabinet shall:

(a) Use an absent parent search to locate a relative;

(b) Discuss with the relative or fictive kin the option to pursue approval as a foster parent in accordance with 922 KAR 1:350 and document the relative's decision or fictive kin's decision in the case file using the Relative and Fictive Kin Caregiver Agreement.

1. A relative's decision or fictive kin's decision to pursue approval as a foster parent shall not guarantee the cabinet's approval.

2. If a relative or fictive kin declines to pursue approval as a foster parent prior to accepting custody of a child, the relative or fictive kin shall not have another opportunity to pursue being a foster parent at a later time in the child's placement due to ineligibility under 42 U.S.C. 672;

(c) Document in the case file that the fictive kin has completed training on the prevention and recognition of pediatric abusive[abuse] head trauma in accordance with KRS 199.462;

(d) Provide information to the relative and fictive kin on how to recognize and report child abuse and neglect;

(e) Conduct background checks on the relative or fictive kin[consistent with a caretaker relative] pursuant to 922 KAR 1:490; and

(f)[(e)] Complete a home evaluation with consideration given to the relative's or fictive kin's:

1. Willingness and ability to:
  - a. Protect the child from abuse or neglect;
  - b. Participate in the child's case permanency plan;
  - c. Access:
    - (i) Transportation;
    - (ii) Telephone;
    - (iii) Medical services;
    - (iv) First aid supplies; and
    - (v) School;
  - d. Provide full-time care;
  - e. Provide for the child's sleeping and eating;
  - f. Maintain adequate heat and ventilation in the home;
  - g. Use active smoke detectors in the home; and
  - h. Assure the child's inaccessibility to:

(i) Medication unless an exception consistent with 922 KAR 1:350, Section 3(12) applies;

- (ii) Alcoholic beverages;
- (iii) Poisonous[or cleaning] materials;

(iv) Firearms or ammunition in accordance with KRS 527.100 and 527.110;[and]

(v) Unsupervised contact with the birth parent; and

(vi) Cleaning materials unless the materials are age or developmentally appropriate for the child or the child is supervised; and

2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family.

(7) The cabinet shall not be obligated to search for or seek fictive kin as a placement for a child.

(8) A relative or fictive kin who accepts custody of a child removed from the child's home of origin by a court shall not be

entitled to reimbursement in accordance with 922 KAR 1:350, Section 10.

(9) If the case conference held in compliance with KRS 620.180(2)(a)1 results in the child being placed in the custody of the cabinet, the cabinet shall develop and document a case permanency plan, using the DPP-1281, Family Case Plan.

~~(10)[(9)]~~ The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.

~~(11)[(9)]~~ Concurrent planning shall be considered:

- (a) During development of the case permanency plan; and
- (b) At the six (6) month case review.

Section 4. Permanency Goals. (1) A permanency goal for a child who has been removed from the child's home of origin by a court[in the custody of the cabinet] shall be established according to the particular needs and best interest of the child.

(2) A permanency goal shall include one (1) of the following:

- (a) Return to parent;
- (b) Adoption;
- (c) Permanent relative placement;
- (d) Legal guardianship; or
- (e) Another planned permanent living arrangement[; or
- (f) Emancipation].

Section 5. Return to Parent. (1) The cabinet shall recommend to the court that a child who has been removed from the child's home of origin by the court[in the custody of the cabinet] is returned to the parent if the cabinet determines:

(a) A family has made sufficient progress toward completing the case permanency plan; and

(b) Return to the parent is in the best interest of the child.

(2) If the cabinet determines that a family has not made sufficient progress towards achieving the objectives specified in the case permanency plan, the cabinet shall seek a court order for:

- (a) A change in the permanency goal;[or]
- (b) Termination of parental rights; or
- (c) A civil action in support of the child's permanency goal.

(3) If the court determines that a circumstance occurs that negates the requirement to make reasonable efforts to reunify the child and family, as described in KRS 610.127, the cabinet shall select a permanency goal other than return to parent.

Section 6. Adoption. (1) The permanency goal for a child in the custody of the cabinet shall be adoption if:

(a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or

(b) The cabinet pursues involuntary termination of parental rights:

1. Pursuant to KRS 625.090; or
2. If the child has been in foster care for fifteen (15) of the most recent twenty-two (22) months pursuant to 42 U.S.C. 675(5)(E).

(2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section, if:

(a) A relative or fictive kin placement has been secured;

(b) Termination is not in the best interest of the child, for a compelling reason:

1. Documented in the case permanency plan; and
2. Monitored on a continual basis; or

(c) A service necessary for return to parent has not been provided within the time period specified in the case permanency plan.

(3) Cabinet staff shall consider involuntary termination of parental rights at each permanency hearing held pursuant to KRS 610.125(1).

Section 7. Permanent Relative Placement. The permanency goal for a child who has been removed from the child's home of origin by a court[in the custody of the cabinet] shall be permanent custody[relative placement] if:

- (1) Return to the parent is not in the child's best interest; and
- (2) The cabinet determines that a relative who does not pursue

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adoption or legal guardianship is able to provide a permanent home for the child.

Section 8. Legal Guardianship. (1) The permanency goal for a child who has been removed from the child's home of origin by a court~~[in the custody of the cabinet]~~ shall be legal guardianship if the cabinet determines that:

- (a) Return to the parent or adoption is not in the child's best interest;
  - (b) There is an identified adult, including fictive kin, willing to seek legal guardianship of the child; and
  - (c) Legal guardianship by the adult identified in paragraph (b) of this subsection~~[(4)(b) of this section]~~ is in the child's best interest.
- (2) Legal guardianship shall be requested pursuant to KRS 387.025.

Section 9. Another Planned Permanent Living Arrangement. (1) The permanency goal for a child in the custody of the cabinet who is sixteen (16) years of age or older shall be another planned permanent living arrangement if:

- (a) An unsuccessful effort has been made to place the child for adoption or with a relative or fictive kin, and the child has been placed on a national adoption register;
- (b) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;
- (c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest of the child;
- (d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and
- (e) The child has formed psychological ties with those with whom the child lives, and adoption and guardianship have been discussed with the care provider and are not viable alternatives.

(2) Approval shall be obtained from the commissioner or designee prior to the establishment of another planned permanent living arrangement as a permanency goal for a child placed with a private child-caring agency.

~~Section 10. [Emancipation. (1) The permanency goal for a child in the custody of the cabinet shall be emancipation when:~~

- ~~(a) An unsuccessful effort has been made to place the child for adoption or with a relative, and the child has been placed on a national adoption register;~~
  - ~~(b) The child is age sixteen (16) or older; and~~
  - ~~(c) Other permanency options have been considered and are not appropriate due to the specific circumstances of the child.~~
- ~~(2) If emancipation is established as a permanency goal, the child shall be referred to an independent living program administered by the cabinet.~~

~~Section 11.] Permanency Services. (1) The cabinet shall provide services for a child who has been removed from the child's home of origin by a court~~[in the custody of the cabinet]~~ so that permanency is achieved.~~

- ~~(2) Permanency services may include:~~
  - ~~(a) Ongoing case work and monitoring of the family to:~~
    - 1. Maintain the child safely in the child's home; and
    - 2. Ensure safe return of the child if the goal is return to the parent;
  - ~~(b) Independent living services and programming for the child in accordance with 42 U.S.C. 677.~~
  - ~~(c) Adoption assistance pursuant to 922 KAR 1:050 or 922 KAR 1:060;~~
  - ~~(d)[(e)] Post-finalization adoption assistance if adoption assistance has not been previously approved pursuant to KRS 199.555 and 199.557;~~
  - ~~(e)[(d)] Post-adoption placement stabilization services as described in 922 KAR 1:530; or~~
  - ~~(f)[(e)] Referral to other cabinet and community resources necessary for the achievement or maintenance of the child's~~

permanency goal. Other cabinet resources for a prospective or existing permanent relative or fictive kin placement may include:

- 1. The Kentucky Transitional Assistance Program (K-TAP) for a child if an application is made in accordance with 921 KAR 2:006 and 921 KAR 2:016;
- 2. Health benefits for a child if an application is made in accordance with 907 KAR 20:015, 907 KAR 4:020, or 907 KAR 4:030;
- 3. Supplemental Nutrition Assistance Program (SNAP) benefits for a household if an application is made in accordance with 921 KAR 3:030;~~[or]~~
- 4. Relative placement support benefit in accordance with 922 KAR 1:400, to the extent funds are available;~~or~~
- 5. The Child Care Assistance Program in accordance with 922 KAR 2:160.

~~Section 11[42]. Funerals and Burials. (1) The biological or legal parent of a child deceased while in temporary custody or committed to the cabinet, shall be responsible for funeral arrangements, unless the:~~

- ~~(a) Parental rights have been terminated;~~
  - ~~(b) Parent cannot be located; or~~
  - ~~(c) Parent is unable to make funeral arrangements.~~
- ~~(2) Personal and family resources, including the deceased child's trust fund and insurance in the deceased child's name, shall be exhausted prior to the approval of cabinet funds for funeral and burial expenses.~~

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

- (a) "DPP-1281, Family Case Plan", 11/16; and
- (b) "Relative and Fictive Kin Caregiver Agreement", 1/18[7/17]; ~~is incorporated by reference.~~

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

ADRIA JOHNSON, Commissioner  
VICKIE YATES BROWN GLISSON, Secretary  
APPROVED BY AGENCY: October 10, 2017  
FILED WITH LRC: October 11, 2017 at 4 p.m.  
CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policies and procedures for foster care and adoption permanency services that are mandated by federal and state laws.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through the establishment of the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.
  - (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 through its establishment of the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.
- (2) If this is an amendment to an existing administrative

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regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation implements 2017 Ky. Acts ch. 10, which authorizes the placement of children removed from their homes with origin by the cabinet with fictive kin, and clarifies reimbursements for the child's care. Additionally, the amendment removes emancipation as a permanency goal for a child placed outside of the home of origin. According to the Court of Justice, emancipation is not a legally available permanency option for children due to a lack of statutory authority. Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A and clarifications in response to public comments.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the 2017 Ky. Acts ch. 10, clarify reimbursement policies for children, and make corrections to the permanency services per inputs from the Court of Justice.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by adding fictive kin as a permanency option for children removed from their homes of origin by the cabinet, clarifying reimbursement policies for children, and making corrections per inputs from the Court of Justice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in effective administration of the statutes through its conformity and alignment with state laws applicable to permanency services offered through the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 7, 2017, there were 8,375 children in foster care who are served by a variety of foster care providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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 will allow fictive kin as a placement option for children who are removed from their homes of origin. The processes for fictive kin will be similar, though not identical, to the processes for relatives.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Fictive kin will have the option of accepting a child for placement and pursuing approval as a foster/adoptive parent. There is no new or additional cost being forced upon regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will allow the cabinet to place children removed from their homes of origin with fictive kin, a caregiver with whom the child has a significant emotional bond. The ability to place with fictive kin will prevent some children from being placed in the custody of the cabinet and/or with a provider who is otherwise a stranger to the child. The use of fictive kin may also allow some children to remain in the children's communities and schools of origin. Fictive kin has been found as more stable and less traumatizing placement type for children removed from their homes of origin in other states.

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

(a) Initially: Initial implementation costs to the administering agency will be within existing appropriations.

(b) On a continuing basis: Ongoing implementation of the administrative regulation by the agency will be within appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Titles IV-B and IV-E (of the Social Security Act) funds, the federal Temporary Assistance for Needy Families Block Grant (TANF), the federal Social Services Block Grant (SSBG), restricted

funds derived from Medicaid, and State General Funds are the funding sources for this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

2. State compliance standards. KRS 194A.050(1), 199.467, 620.180

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard or additional or different responsibilities or requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is 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), 199.467, 620.180, 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for state or local government in its first year.

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

(c) How much will it cost to administer this program for the first year? Initial implementation costs to the administering agency will be within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Ongoing implementation of the administrative regulation by the agency will be within 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:

CABINET FOR HEALTH AND FAMILY SERVICES  
 Department for Community Based Services  
 Division of Protection and Permanency  
 (Amended After Comments)

922 KAR 1:320. Service appeals.

RELATES TO: KRS 2.015, Chapter 13B, 23A.010, 194A.005, 194A.030(11), 199.011(4), (9), 199.555(2), 199.557, 209.020(4), (5), 209A.020(4), (5), 600.020(9), (28), (46)[(44)], 605.090(1)(b), (6), 610.110(6)(d), 620.020(1), 620.180(2)(a)1, 620.230, 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, 671(a)(23), 673, 675, 1397

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) designates the Cabinet for Health and Family Services as the primary state agency responsible for leadership in protecting and promoting the well-being of Kentuckians through the delivery of quality human services. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds, including 45 C.F.R. 205.10, made applicable to titles IV-B and IV-E programs by references in 45 C.F.R. 1355.21(b) and 1355.30(p). This administrative regulation establishes procedures related to appeals and complaints for benefits and services under 922 KAR Chapters 1 and [through] 5 [until April 1, 2017, and Chapters 1, 3, and 5 effective April 1, 2017].

Section 1. Definitions. (1) "Adoption assistance" means a payment under:

(a) KRS 199.555(2) and 922 KAR 1:050[~~State-funded adoption assistance~~]; or

(b) KRS 199.557 and 922 KAR 1:060[~~Federal Title IV-E adoption assistance~~].

(2) "Adult" is defined by KRS 209.020(4)[~~or 209A.020(4)~~].

(3) "Caretaker relative" means a relative[~~:- (a)~~] with whom a child is, or will be, placed by the cabinet[~~;- and (b) Who is seeking to qualify as a kinship caregiver in accordance with 922 KAR 1:130, Kinship Care Program~~].

(4) "Case permanency plan" is defined by KRS 620.020(1) and described in KRS 620.230 for a child placed outside the home.

(5) "Case plan" means a plan described in 922 KAR 1:430[~~Child Protective Services In-home Case Planning and Service Delivery~~] for a child who remains in the home.

(6) "Case planning conference" means a meeting in which a case plan or a case permanency plan is developed or modified in accordance with KRS 620.180(2)(a)1.

(7) "Child" means:

(a) A child defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

~~(8) "Child care assistance" means subsidy benefits as described by 922 KAR 2:160, Child Care Assistance Program.~~

(8) "Child welfare services" means benefits or services on behalf of a child meeting a purpose of 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, or 1397.

~~(9) [(9)] "Commissioner" means the Commissioner of the Department for Community Based Services or designee.~~

~~(10) [(9)] [(10)] "Contract agency" means a business or organization that offers child welfare, adult, or domestic violence[protective, or child care] services to the public through a contract or agreement with the cabinet.~~

~~(11) [(10)] "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).~~

~~(12) [(11)] "General adult services" means a voluntary preventative service in accordance with 922 KAR 5:090[General adult services].~~

~~(13) [(12)] "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal in accordance with Section 6(7) of this administrative regulation.~~

~~(14) [(13)] "Kinship caregiver" means a qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care in accordance with 922 KAR 1:130[ ~~Kinship Care Program~~].~~

~~(15) [(14)] "Parent" is defined by KRS 600.020(46)[(44)] and 42 U.S.C. 675(2) for child welfare benefits and services.~~

~~(16) [(15)] "Protective services" is defined by KRS 209.020(5)[~~or 209A.020(5)~~]. [(16) "Registered child care provider" means a child care provider registered in accordance with 922 KAR 2:180.]~~

Section 2. Right to Appeal. (1) A parent may request review of the following through an administrative hearing:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 12[44]; or

2. 922 KAR 1:430, Section 4[4]; or

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;

2. Complete a case plan[~~;~~] or case permanency plan;

3. Provide or refer for services as specified in the case plan or case permanency plan; or

4. Meet a[the] mandated timeframe[time frames] for child protective services specified in 922 KAR 1:330.

(2) A foster parent approved by the department in accordance with 922 KAR 1:350 or an adoptive parent may request review of the following through an administrative hearing:

(a) Failure by the cabinet to:

1. Process reimbursement to the home with reasonable promptness;

2. Provide information required by KRS 605.090(1)(b) and (6);

3. Advise an adoptive parent of the availability of adoption assistance in accordance with 922 KAR 1:050[~~State-funded adoption assistance~~] or 922 KAR 1:060[~~Federal Title IV-E adoption assistance~~]; or

4. Provide an adoptive parent with known relevant facts regarding the:

a. Child;

b. Child's background prior to finalization of the adoption; and

c. Child's biological family;

(b) Determination of ineligibility for adoption assistance upon execution of an adoptive placement agreement under 922 KAR 1:050[~~State-funded adoption assistance~~] or 922 KAR 1:060[~~Federal Title IV-E adoption assistance~~];

(c) Denial of a request for a change in payment level due to a change in circumstances of an adoptive parent or child when the adoption assistance agreement is renewed under 922 KAR 1:050[~~State-funded adoption assistance~~] or 922 KAR 1:060[~~Federal Title IV-E adoption assistance~~]; or

(d) Closure of a foster or adoptive home under 922 KAR 1:350[~~Family preparation~~], unless a provision of Section 3(1)(f), (g), (h), or (i) of this administrative regulation applies.

(3) An approved and available adoptive parent outside the jurisdiction with responsibility for handling the case of an adoptive child may request an administrative hearing for the cabinet's denial or delay in placement of the child for adoption pursuant to 42 U.S.C. 671(a)(23).

(4)(a) A kinship caregiver may request an administrative hearing pursuant to 922 KAR 1:130, Section 19.

(b) Pursuant to 922 KAR 1:130, Section 19(2), a kinship caregiver who is dissatisfied with an action or inaction on the part of the cabinet relating to financial assistance under the Kinship Care Program may request an administrative hearing under the provisions of 921 KAR 2:055[~~Hearings and appeals~~].

(5) An applicant determined by the cabinet to be ineligible for a tuition waiver may request an administrative hearing pursuant to 922 KAR 1:450, Section 3.

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(6) An applicant determined by the cabinet to be ineligible for an educational and training voucher may request an administrative hearing pursuant to 922 KAR 1:500, Section 5.

(7) An adult may request review of the following through an administrative hearing:

(a) The cabinet's denial of general adult services or protective services to an adult identified as a victim of abuse, neglect, or exploitation; or

(b) Failure by the cabinet to respond with reasonable promptness to a request for:

1. General adult services; or
2. Protective services for an adult.

~~(8) An applicant for child care assistance or the parent of a child receiving assistance may request an administrative hearing for the denial, reduction, suspension, or termination of benefits pursuant to 922 KAR 2:160, Section 17.~~

~~(9) An applicant for child care registration or a registered child care provider may request an administrative hearing in accordance with:~~

- ~~(a) This administrative regulation; or~~
- ~~(b) Effective April 1, 2017, 922 KAR 2:260.~~

~~(10) An individual aggrieved by an action of the cabinet may request an administrative hearing for a matter by which a Kentucky Revised Statute or 922 KAR Chapters 1 and through 5 expressly permits the appeal of a cabinet action or alleged act.~~

~~(9) [(14)] A parent or an adult aggrieved by an action of the cabinet may request review of the following through an administrative hearing:~~

~~(a) A cabinet denial, reduction, suspension, or termination of services or federally-funded benefits, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 and through 5; or~~

~~(b) A cabinet failure to act with reasonable promptness to a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 and through 5.~~

Section 3. Matters Not Appealable through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing:

(a) A matter in which a court:

1. Has previously made a judicial determination or issued an order on the same issue being appealed; or

2. Is currently engaged in legal proceedings regarding the same issue being appealed;

(b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;

(d) Failure to submit a written request for appeal within the time frame established by Section 6(4)(b) of this administrative regulation;

(e) A decision to deny:

1. Approval of an individual seeking to provide foster or adoptive services or respite care in accordance with 922 KAR 1:350 or 922 KAR 1:310; or

2. A caretaker relative approval as a kinship caregiver if the:

a. Caretaker relative fails to meet the provisions of 922 KAR 1:130, Section 5; or

b. Child is ineligible in accordance with 922 KAR 1:130, Section 9;

3. A caretaker relative's or fictive kin's ineligibility for reimbursement in accordance with 922 KAR 1:140, Section 3(8); or

4. Approval of an individual seeking to be a relative or fictive kin placement if the individual fails to meet provisions of 922 KAR 1:140, Section 3(6);

(f) Removal of a foster child from a foster or adoptive home or respite care provider if the foster or adoptive home parent, respite care provider, or another individual residing in the home has been found by the cabinet to have abused, neglected, or exploited a child and the:

1. Foster or adoptive home parent, respite care provider, or

other individual waived the right to appeal the substantiated incident; or

2. Substantiated incident was upheld after:

a. An administrative hearing; or

b. Judicial review;

(g) Removal of a child from a foster home, relative caregiver, or fictive kin for the purpose of:

1. Achieving a permanency goal described by 922 KAR 1:140; Foster care and adoption permanency services]; or

2. Uniting or reuniting the child with a sibling at the next placement;

(h) Closure of a foster or adoptive home if the cabinet has not placed a child in the home within the previous two (2) years;

(i) Closure of a foster or adoptive home according to the terms of the contract between the cabinet and the foster or adoptive home;

(j) A situation where state or federal law requires adjustment of a payment or grant, except if a payment or grant computation is incorrect;

(k) The per diem rate of reimbursement paid to a foster home parent; or

(l) Decision to not recommend a foster home parent in accordance with 922 KAR 1:350, Section 6(9) for enrollment in specialized training as a medically complex foster parent or care plus foster parent.

(2) A complaint of discrimination may be filed with the cabinet's Office of Human Resource Management in accordance with 920 KAR 1:090.

Section 4. Service Complaints. (1) If a matter is not subject to review through an administrative hearing, a parent, caretaker relative, kinship caregiver, fictive kin, foster or adoptive parent approved by the department in accordance with 922 KAR 1:350, or an adult may:

(a) Attempt to resolve the issue by submitting a written complaint to the service region administrator or designee within thirty (30) calendar days after the date of the cabinet action or alleged act; or

(b) Contact the cabinet's Office of the Ombudsman if the matter was not previously reviewed:

1. By that office; or

2. Pursuant to paragraph (a) of this subsection.

(2) A child who is under the age of eighteen (18) and is in the custody of the cabinet [or has extended commitment to the cabinet in accordance with KRS 610.110(6)], or a child who has aged out of the cabinet's custody within the previous twelve (12) months may file a complaint through the Office of the Ombudsman for any of the following:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 12; or

2. 922 KAR 1:430, Section 4; or

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;

2. Complete a case plan or case permanency plan;

3. Provide or refer for services as specified in the case plan or case permanency plan; or

4. Meet a mandated timeframe for child protective services specified in 922 KAR 1:330.

(3) A child described in subsection (2) of this section may file a complaint or a request for the commissioner's review in accordance with subsection (5) of this section with assistance from the child's authorized representative.

(4)(a) The service region administrator, administrator's designee, or the cabinet's Office of the Ombudsman shall provide a written response to the complainant within thirty (30) calendar days of receipt of a written complaint not subject to review through an administrative hearing.

(b) The service region administrator or the ombudsman may grant an extension to the response timeframe given in paragraph

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(a) of this subsection if:

1. Extenuating circumstances prolong the review of the complaint; and

2. Notice of the extension is provided to the complainant.

~~(5)(3)~~(a) A parent, caretaker relative, kinship caregiver, fictive kin, foster or adoptive parent approved by the department in accordance with 922 KAR 1:350, a child described in subsection (2) of this section, or an adult dissatisfied with a written response rendered by the service region administrator, administrator's designee, or the Office of the Ombudsman may request that the commissioner review the complaint and the written response.

(b) A request for review shall be submitted in writing to the commissioner within ten (10) calendar days of receipt of the written response provided in accordance with subsection ~~(4)(2)~~ of this section.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the complainant of the need for an extension to the timeframe specified in this paragraph.

(d) The department shall abide by the commissioner's written determination.

~~(6)(4)~~ The department shall compile data regarding service complaints to:

(a) Fulfill federal and state reporting requirements; and

(b) Use for program development and evaluation.

Section 5. Other Appeals~~[Appeal of a Child Abuse or Neglect Investigative Finding]~~. (1) An individual who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's finding through an administrative hearing in accordance with 922 KAR 1:480~~[Appeal of child abuse and neglect investigative findings]~~.

(2) An individual aggrieved by a cabinet action or inaction under 922 KAR Chapter 2 may appeal the action or inaction in accordance with 922 KAR 2:260.

Section 6. Request for Appeal. (1) The cabinet shall provide a copy of:~~(a)~~ the DPP-154, Protection and Permanency Service Appeal Request, to an individual:

~~(a)[1-]~~ At each case planning conference;

~~(b)[2-]~~ Upon denial, reduction, modification, suspension, or termination by the cabinet of:

~~1.[a-]~~ Child welfare services provided by the cabinet;

~~2.[b-]~~ General adult services or protective services, if notification does not present a risk of harm to the victim;

~~3.[c-]~~ Adoption assistance; or

~~4.[d-]~~ Other federally-funded program benefit described in 922 KAR Chapter 1~~[, 3,]~~ or 5; or

~~(c)[3-]~~ Upon determination that a student is not eligible for a tuition waiver or education and training voucher~~;~~ or

~~(b) Until April 1, 2017, the DCC-88, Child Care Service Appeal Request, to an individual:~~

~~1. Upon the denial, reduction, or termination of child care assistance;~~

~~2. In accordance with 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program, for a:~~

~~a. Withdrawal or denial of child care registration application, not at the request of the applicant; or~~

~~b. Revocation or closure of a registered child care provider, not at the request of the provider;~~

~~3. Upon a reduction or revocation of a child care provider's STARS level in accordance with:~~

~~a. 922 KAR 2:170, STARS for KIDS NOW Program for Type I licensed child care centers; or~~

~~b. 922 KAR 2:240, STARS for KIDS NOW Program for Type II licensed and certified family child care homes; or~~

~~4. Upon a revocation of a trainer's credential in accordance with 922 KAR 2:240, Kentucky Early Care and Education Trainer's Credential and training approval.]~~

(2) At least ten (10) calendar days prior to the denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall hand-deliver or mail:

~~(a)] the DPP-154A, Protection and Permanency Notice of Intended Action[;~~

~~(b) Until April 1, 2017, the DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals; or~~

~~(c) Notice in accordance with 922 KAR 2:160, Section 11].~~

(3) The cabinet may take emergency action under KRS 13B.125.

(4) A request for appeal shall:

(a) Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance;

(b) Be submitted to the cabinet no later than thirty (30) calendar days from the date:

1. That the notice provided in accordance with subsection (2) of this section was issued; or

2. Of the occurrence of the disputed action;

(c) Describe the:

1. Cabinet action in dispute; or

2. Alleged act;

(d) Specify:

1. The reason the appellant disputes the cabinet's action;

2. Name of each cabinet staff person involved with the disputed action, if known; and

3. Date of the cabinet action or alleged act in dispute; and

(e) Include the notice provided in accordance with subsection (2) of this section, if available.

(5)(a) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the:

1. Matter is not appealable; and

2. Resolution of the matter may be pursued through the service complaint process described in Section 4 or 10 of this administrative regulation.

(6) If the cabinet receives a written request for appeal within ten (10) calendar days from the date the notice provided in accordance with subsection (2) of this section was issued or the date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the outcome of the appeal.

(7) The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification may include:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing.

Section 7. Administrative Hearing. Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B.

Section 8. Recommended Order. (1) A copy of the recommended order shall be sent simultaneously to:

(a) Each party to the administrative hearing;

(b) The commissioner of the Department for Community Based Services; and

(c) The secretary of the Cabinet for Health and Family Services or designee.

(2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS 13B.110(4) with the secretary, which shall:

(a) Be filed within fifteen (15) calendar days of the date the recommended order was mailed;

(b) Be based on facts and evidence presented at the hearing;

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(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each [other] party involved in the hearing.

Section 9. Final Order. (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.

(2)(a) Unless waived by an appellant, final administrative action shall be taken within ninety (90) calendar days from the date of the request for an administrative hearing as required by 45 C.F.R. 205.10.

(b) If the appellant waives the ninety (90) calendar day requirement specified in paragraph (a) of this subsection, the hearing officer shall notify all parties to the hearing when final administrative action will be taken.

(3) An aggrieved party may petition for judicial review in accordance with:

- (a) KRS 13B.140 to 13B.160; or
- (b) KRS 23A.010.

Section 10. Contract Agencies. (1) A contract agency shall offer a complaint process consistent with:

- (a) Section 4 of this administrative regulation; or
- (b) Provisions of the contract or agreement between the contract agency and the cabinet, if the provisions are different from Section 4 of this administrative regulation.

(2)(a) An individual dissatisfied with a final written response rendered by a contract agency regarding a complaint may request that the commissioner review the complaint and the contract agency's written response.

(b) A request for review shall be submitted to the commissioner within ten (10) calendar days of the contract agency's written response.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

- 1. Extenuating circumstances prolong the review of the complaint; and
- 2. The commissioner notifies the client of the need for an extension to the timeframe specified in this paragraph [subparagraph].

(d) The contract agency shall abide by the commissioner's written determination.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) [~~"DCC-88, Child Care Service Appeal Request", 2016;~~
- (b) [~~"DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals", 2016;~~
- (c)] [~~"DPP-154, Protection and Permanency Service Appeal Request", 11/09; and~~
- (d)] [~~"DPP-154A, Protection and Permanency Notice of Intended Action", 11/09.~~

(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.

ADRIA JOHNSON, Commissioner  
VICKIE YATES BROWN GLISSON, Secretary  
APPROVED BY AGENCY: October 10, 2017  
FILED WITH LRC: October 13, 2017 at 11 a.m.  
CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes procedures related to appeals

and complaints for benefits and services under Title 922 KAR Chapters 1 and 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish appeals and complaint procedures for benefits and services under Title 922 KAR Chapters 1 and 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing complaint and appeals procedures for benefits and services under Title 922 KAR Chapters 1 and 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures related to service appeals and complaints for services and benefits under Title 922 KAR Chapters 1 and 5.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes this administrative regulation by removing all references to Title 922 KAR Chapter 2 governing child care (a.k.a., day care). In addition, the amendment makes changes for congruency with 2017 Ky. Acts ch. 10 and related administrative regulations. The amendment provides an avenue for a child in the cabinet's custody to wage complaint through a process independent from the child's cabinet worker or service provider(s). Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure congruency with 922 KAR 2:260 governing child care service appeals and 2017 Ky. Acts ch. 10 allowing fictive kin as a placement type. The amendment is also necessary to ensure a child in the custody of the cabinet has his or her personal rights and welfare protected through an avenue of complaint independent from the child's cabinet worker or direct service provider(s).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by updating service appeal and complaint procedures congruent with recently enacted legislation and administrative regulation and ensuring children in the custody have a means to complain independent from the child's cabinet worker or service provider(s).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes through its technical and conforming changes and through its inclusion of a new complaint procedure for children in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals receiving child welfare or adult services are entities impacted by this administrative regulation, which governs service appeals and complaints for Title 922 KAR Chapters 1 and 5. In State Fiscal Year 2016, the cabinet conducted over 30,000 investigations of vulnerable adult maltreatment, and over 55,000 investigations of child maltreatment. A child who is under the age of eighteen (18) and in the custody of the cabinet, who has extended the child's commitment to the cabinet, or who has aged out of the cabinet's custody within the previous twelve (12) months will be newly affected by the amendment to this administrative regulation. On June 4, 2017, the cabinet had 8,527 children in foster care.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A child, as described in item 3, who is aggrieved by an action or inaction on the part of the cabinet, may file a complaint through the cabinet's Ombudsman's Office as an



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alternative to complaining to the child's cabinet worker or service provider(s). This allows an alternative and independent avenue for complaint to better protect the child's rights and welfare. No other new action is being applied to regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities affected by the amendment to this administrative regulation will not incur any costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The children identified under item 3 will have an avenue for service complaint different from and independent from the children's cabinet workers or service providers to ensure the children's rights and welfare are protected. Regulated entities will also benefit from the improved clarity and technical corrections provided through the amendment.

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

(a) Initially: Initial implementation costs to the administrating agency will be within existing appropriations.

(b) On a continuing basis: Ongoing implementation of the administrative regulation by the agency will be within existing appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Social Services Block Grant, Title IV-E (of the Social Security Act) funds, and General Fund dollars are utilized to support the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, 671(a)(23), 673, 675, 1397

2. State compliance standards. KRS 13B.170, 194A.010(2), 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, 671(a)(23), 673, 675, 1397

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standards, or additional or different responsibilities or requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is 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 13B.170, 194A.010(2), 194A.050(1), 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4),

629, 670, 671(a)(23), 673, 675, 1397

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

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

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

(c) How much will it cost to administer this program for the first year? Any new administrative function associated with this administrative regulation will be absorbed within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Any new administrative function associated with this administrative regulation will be absorbed within existing appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amended After Comments)

#### 922 KAR 1:330. Child protective services.

RELATES TO: KRS 13B.050, 13B.120, 13B.140, 13B.150, 159.140, 194A.005(1), 202A.011, 211.684, 214.036, 431.600(1), (8), 503.110(1), 529.010(5), (13), 600.010, 600.020, 605.090(3), 605.130, 610.010(2)(d), (9), 620.010-620.050, 620.070, 620.072, 620.350, 620.990, 42 U.S.C. 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605 - Administrative Matters. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620 - Dependency, Neglect, and Abuse. KRS 620.029(2)(a) requires the cabinet, in consultation with agencies serving victims of human trafficking, to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, and services. In addition, 42 U.S.C. 5106a(b) establishes eligibility requirements for a state to receive a grant for a child abuse and neglect prevention and treatment program. This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or ~~family-in-need-of-services~~ assessment of abuse, neglect, or dependency.

Section 1. Definitions. (1) "Assessment" means the collection and analysis of information to inform decision-making about or service provision to a child or a family,

**including:**

**(a) An observable threat or threatening condition to the child's safety.**

**(b) A factor present that increases the likelihood of child abuse, neglect, or dependency; and**

**(c) Child or family strengths and protective capacities.**

**(2)** "Cabinet" is defined by KRS 194A.005(1) and 600.020(7)(~~6~~).

**(3)(~~2~~)** "Caretaker" means a parent, guardian, or other person exercising custodial control or supervision of a child.

**(4)(~~3~~)** "Child fatality" is defined by KRS 211.684.

**(5)(~~4~~)** "Child protective services" means preventive and corrective services directed toward:

(a) Safeguarding the rights and welfare of an abused, neglected, or dependent child;

(b) Assuring for each child a safe and nurturing home;

(c) Improving the abilities of parents to carry out parental responsibilities;

(d) Strengthening family life; and

(e) Assisting a parent or other person responsible for the care of a child in recognizing and remedying conditions detrimental to the welfare of the child.

**(6) "Dependent child" is defined by KRS 600.020(20).**(~~4~~) "Family-in-need-of-services assessment" or "FINSA" is a process of collecting information and evaluating risk factors to determine if a family is in need of child protective services.]

**(7)(~~5~~)** "Human trafficking" is defined by KRS 529.010(5).

**(8)(~~6~~)** "Initial determination" means an evaluation of risk factors to determine immediate safety and risk of harm resulting in a decision whether to proceed with an:

(a) An Investigation; or

(b) Assessment[A-FINSA].

**(9)(~~7~~)** "Investigation" means a process of collecting information and evaluating risk factors to determine if a child:

(a) Has been abused or neglected;~~or~~

(b) Is dependent; **or**

**(c) Is a victim of human trafficking.**

**(10)(~~8~~)** "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

**(11)(~~9~~)** "Preponderance of evidence" means that evidence is sufficient to conclude that it is more likely than not that an alleged perpetrator committed an act of child abuse or neglect as defined by~~in~~ KRS 600.020(1).

**(12)(~~10~~)** "Prior involvement" means any assessment or investigation, of which the cabinet has record, with a child or family in the area of protection and permanency prior to the child's fatality or near fatality investigation.

**(13)(~~11~~)** "Services needed" means a low risk finding with no perpetrator that indicates a family needs to be linked to community services.

**(14)(~~12~~)**(~~9~~) "Sexual abuse" is defined by KRS 600.020(61)(~~56~~).

**(15)(~~13~~)**(~~10~~) "Sexual exploitation" is defined by KRS 600.020(62)(~~57~~).

**(16)(~~14~~)**(~~11~~) "Social service worker" is defined by KRS 600.020(58).

(~~12~~) "Substantiated" means:

(a) An admission of abuse **or** neglect~~,~~ **or dependency** by the person responsible;

(b) A judicial finding of child abuse **or** neglect~~,~~ **or dependency**; or

(c) A preponderance of evidence exists that abuse **or** neglect~~,~~ **or dependency** was committed by the caretaker.

**(17)(~~15~~)**(~~13~~) "Unable to locate" means that:

(a) Identifying information about the family is insufficient for locating them; or

(b) The family has moved and their new location is not known.

**(18)(~~16~~)**(~~14~~) "Unsubstantiated" means there is insufficient evidence, indicators, or justification present for substantiation of abuse **or** neglect~~,~~ **or dependency**.

**(19)(~~17~~)**(~~15~~) "Victim of human trafficking" is defined by KRS 529.010(13).

Section 2. A Report of Child Abuse, Neglect, or Dependency. (1) In accordance with 42 U.S.C. 5106a(b)(2)(B)(i), the cabinet shall accept reports of alleged child abuse, neglect, or dependency made pursuant to KRS 620.030.

(a) A twenty-four (24) hour on-call response system and the child abuse hotline, for the receipt of emergency reports after normal office hours, shall be made available to those in a community who may have information regarding:

1. Child abuse, neglect, or dependency; or
2. Human trafficking of a child.

(b) Cabinet staff or designee shall attempt to elicit from the person reporting suspected child abuse, neglect, dependency, or human trafficking as much information about the child's circumstances~~;~~ as possible, including:

1. Specific information as to the nature and extent of:

- a. Abuse, neglect, or dependency; or
- b. Human trafficking;
2. The cause of the abuse, neglect, or dependency;
3. The location of the child and family;
4. Knowledge or suspicion of a previous incident;
5. Identifying information regarding a witness to the alleged incident that resulted in the child's condition;

6. An action taken by the reporting person, if applicable;

7. Present danger or threat of danger to the child or cabinet staff; and

8. Information in accordance with KRS 620.030(2) and (3).

(c) The reporting person's identity shall remain confidential, unless ordered to be divulged by a court of competent jurisdiction.

(d) The cabinet shall investigate or accept as **an investigation or assessment**[a-FINSA] an anonymous report that provides sufficient information regarding an incident involving a child:

**1. Who is alleged to be dependent; or**

**2. And alleged:**

**a.1-1** Abuse **or** neglect~~,~~ **or dependency** perpetrated by a caretaker; or

**b.2-1** Human trafficking of the child.

(e) Immunity from liability shall be in accordance with 42 U.S.C. 5106a(b)(2)(B)(vii) and KRS 620.050(1) and (2).

(2) The cabinet shall not undertake an investigation or **assessment**[FINSA] for a report of abuse or neglect allegedly perpetrated by a non-caretaker, with the exception of a report of human trafficking, but shall refer the matter in compliance with KRS 620.030(1).

(3) Pursuant to KRS 620.040(1)(b) and (2)(b), if a report does not meet an acceptance criterion for an investigation or **assessment**[FINSA], the cabinet shall:

(a) Not accept the report for investigation or **assessment**[FINSA];

(b) Refer the caller to a community resource that may meet family needs if available; and

(c) Keep a record of the report~~;~~ in accordance with 42 U.S.C. 5106a(b)(2)(B)(xii).

(4) Acceptance criteria for an investigation or **assessment**[FINSA]. The cabinet shall:

(a) Investigate or conduct **an assessment**[a-FINSA] upon the receipt of a report of physical abuse, if the report alleges:

1. An injury that is, or has been, observed on a child that was allegedly inflicted ~~non-accidentally~~[nonaccidentally] by a caretaker;

2. Physical abuse if no current observable injury is seen;

3. A child being hit in a critical area of the body, such as the head, neck, genitals, abdomen, ~~or~~[and] back; or

4.~~a.~~ Physical injury to a child, as defined by KRS 600.020(46), that is the result of an altercation between the child and the caretaker.~~b.~~ The cabinet shall explore the following:

**a.**(~~ii~~) Age of the child;

**b.**(~~iii~~) Precipitating factors;

**c.**(~~iv~~) Degree of appropriateness of force used by the caretaker; and

**d.**(~~v~~) Need for further services to assist in eliminating violent behavior in the home;

(b) Investigate or conduct **an assessment**[a-FINSA] upon receipt of a report that alleges neglect of a child perpetrated by a caretaker that may result in harm to the health and safety of a child

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in the following areas:

1. Hygiene neglect if:
    - a. A child has physical symptoms that require treatment due to poor care; or
    - b. The child's physical health and safety are negatively affected due to an act or omission by the caretaker;
  2. Supervision neglect if the individual reporting has reason to believe that the physical health and safety of the child may be negatively affected by lack of necessary and appropriate supervision;
  3. Food neglect if a child shows symptoms of:
    - a. Malnutrition;
    - b. Dehydration; or
    - c. Not having been provided adequate food for a period of time that interferes with the health needs of the child, based on height or weight norms for the child's age;
  4. Clothing neglect if a child suffers from:
    - a. Illness;
    - b. Exposure; or
    - c. Frostbite due to inadequate clothing provided to the child or the clothing provided is insufficient to protect the child from the elements;
  5. Environmental neglect, if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;
  6. Educational neglect if the:
    - a. School system has exhausted its resources to correct the problem and complied with its duties pursuant to KRS 159.140; and
    - b. Caretaker's neglect prevents the child from attending school or receiving appropriate education;
  7. Medical neglect, in accordance with 42 U.S.C. 5106a(b)(2)(C), if a child has not received a medical assessment or is not receiving treatment for an injury, illness, or disability that if left untreated may:
    - a. Be life-threatening;
    - b. Result in permanent impairment;
    - c. Interfere with normal functioning and worsen; or
    - d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease, unless the child is granted an exception to immunization pursuant to KRS 214.036;
  8. At risk of harm due to an act described at KRS 600.020(1), if a child is:
    - a. Born exposed to drugs or alcohol, as documented by a health care provider pursuant to:
      - (i) 42 U.S.C. 5106a(b)(2)(B)(ii); and
      - (ii) KRS 620.030(2);
    - b. Involved in an incident of domestic violence;
    - c. Permitted to use drugs or alcohol under circumstances that create a risk to the emotional or physical health of the child;
    - d. In a situation if the factors provided in a report indicate that:
      - (i) An act of sexual abuse, sexual exploitation, or prostitution involving a child may occur; or
      - (ii) The child exhibits physical or behavioral indicators of sexual abuse; or
    - e. In a situation where the circumstances are such that a child is likely to be physically abused; or
  9. Exploitation neglect if the:
    - a. Caretaker has used a child or child's financial resources for personal gain;
    - b. Caretaker has enticed a child to become involved in criminal activities; or
    - c. Child is a victim of human trafficking;
- (c)[1-] Receive and investigate a report that alleges sexual abuse of a child committed or allowed to be committed by a caretaker.[2-] An investigation may be conducted without a specific allegation if a child has a sexually transmitted disease;
- (d) Receive and investigate or complete an assessment[a FINSA] upon the receipt of a report that alleges a child is dependent, pursuant to KRS 600.020(19); and
- (e) Investigate or complete an assessment[a FINSA] upon the receipt of a report that alleges emotional injury or risk of emotional injury to a child by a caretaker pursuant to KRS 600.020(25).

(5) The following criteria shall be used in identifying a report of abuse, neglect, or dependency not requiring a child protective services investigation or assessment[FINSA]:

- (a) The victim of the report of abuse, neglect, or dependency is age eighteen (18) or over at the time of the report;
  - (b) There is insufficient information to locate the child or to explore leads to locate;
  - (c) The problem described does not meet the statutory definitions of abuse, neglect, or dependency;
  - (d) The reporter notifies the cabinet that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;
  - (e) The report concerns custody changes, custody related issues, or lifestyle issues, without allegations of abuse, neglect, or dependency;
  - (f) Pursuant to KRS 503.110(1), corporal punishment appropriate to the age of the child, without an injury, mark, bruise, or substantial risk of harm;
  - (g) The report concerns a newborn infant abandoned pursuant to KRS 620.350; or
  - (h) An allegation of spouse abuse to a married youth under the age eighteen (18).
- ~~(6) [A report of spouse abuse to a married youth under the age of eighteen (18) shall be forwarded to cabinet staff for action pursuant to 922 KAR 5:102.~~
- (7) A report of corporal punishment described in subsection (5)(f) of this section shall be reported to and assessed by the cabinet, if alleged to be committed by a caretaker parent who:
- (a) Provides foster, pre-adoptive, or respite care services for a child in the custody of the cabinet; and
  - (b) Is approved pursuant to 922 KAR 1:310 or 922 KAR 1:350.

Section 3. Initial Investigation or Assessment[FINSA]. (1) Based upon an accepted report of child abuse, neglect, or dependency, the cabinet shall, in accordance with KRS 620.040(1)(b) or (2)(b), and 42 U.S.C. 5106a(b)(2)(B)(iv), make an initial determination as to the immediate safety and risk of harm to a child.

(2) The cabinet shall have face-to-face contact with the child or, in the case of a child fatality, initiate the investigation within four (4) hours after acceptance of the report if a report of child abuse, neglect, or dependency:

- (a) Includes a child who is:
  1. The alleged victim of a fatality or near fatality; or
  2. A surviving child in the care of the alleged perpetrator of a child fatality or near fatality; or
- (b) 1. Involves a child who is:
  - a. Under four (4) years of age; or
  - b. Unable to verbally or nonverbally communicate the child's needs as provided by the reporting source; and
2. Indicates a high risk of harm to the child due to:
  - a. Physical abuse in accordance with Section 2(4)(a) of this administrative regulation;
  - b. Supervision neglect in accordance with Section 2(4)(b)2. of this administrative regulation;
  - c. Sexual abuse in accordance with Section 2(4)(c) of this administrative regulation, and the alleged:
    - (i) Perpetrator has access to the child; or
    - (ii) Perpetrator's access to the child is unknown by the reporting source.

(3) The cabinet shall have face-to-face contact with the child within twenty-four (24) hours after acceptance of the report, if a report of child abuse, neglect, or dependency:

- (a) 1. Indicates a high risk of harm to the child; or
  2. Alleges the child is the victim of human trafficking; and
  - (b) Criteria of subsection (2) of this section are not met.
- (4) If the report of child abuse, neglect, or dependency indicates a moderate risk of harm to a child, the cabinet shall have face-to-face contact with the child within forty-eight (48) hours after acceptance of the report.

(5) If the report of child abuse, neglect, or dependency indicates a low risk of harm to a child, the cabinet shall have face-to-face contact with the child within seventy-two (72) hours after

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~~acceptance of the report. [An investigation shall be initiated within one (1) hour of the report if the report indicates:~~

~~(a) Child abuse, neglect, or dependency that places a child in imminent danger;~~

~~(b) Human trafficking of a child; or~~

~~(c) Sexual abuse of a child.~~

~~(3) If the report of child abuse, neglect, or dependency indicates nonimminent danger of physical abuse, efforts shall be made to have face-to-face contact with the child and family within twenty-four (24) hours.~~

~~(4) If the report of child abuse, neglect, or dependency indicates nonimminent danger, not involving physical abuse, efforts shall be made to have face-to-face contact with the child and family within forty-eight (48) hours.~~

~~(5) An investigation or a FINSAs shall be initiated within forty-eight (48) hours of receipt of the report of dependency, if a child is not in imminent danger.]~~

~~(6) Cabinet staff shall be permitted to interview an alleged victim of child abuse or neglect without obtaining the consent of the child's parent, guardian, or person exercising custodial control in accordance with KRS 620.072 [Unable to locate shall be documented in the investigative or family-in-need-of-services narrative].~~

~~(7) Cabinet staff shall incorporate an unannounced home visit in accordance with provisions in KRS 620.072.~~

~~(8) Cabinet staff [The social service worker] shall advise the individual under investigation of the complaints or allegations in accordance with 42 U.S.C. 5106a(b)(2)(B)(xviii).~~

~~(9) [(8)] A written assessment shall:~~

~~(a) Be completed by the cabinet on every investigation [or assessment] [and FINSAs]; and~~

~~(b) Document efforts if the cabinet is unable to locate the family.~~

~~(10) [(9)] The cabinet shall provide or make a referral to any community-based [community based] service:~~

~~(a) Available to a child, caretaker, or a child's family:~~

~~1. In accordance with 42 U.S.C. 5106a(b)(2)(B)(v),(vi),(ix),(xi), or (xxi); or~~

~~2. Pursuant to KRS 620.029 or 620.040(1)(b) or (2)(b); and~~

~~(b) Necessary to:~~

~~1. Reduce risk to a child; and~~

~~2. Provide family support.~~

~~(11) [(10)] The cabinet shall make a referral for early intervention services pursuant to 42 U.S.C. 5106a(b)(2)(B)(xxi) for a child under the age of three (3) who is involved in a substantiated case of abuse or neglect.~~

~~(12) [(11)] (a) The cabinet may develop a Prevention Plan at any point during an investigation or assessment [a FINSAs] to protect the health and safety of a child.~~

~~(b) The Prevention Plan shall be:~~

~~1. Completed in hardcopy;~~

~~2. Developed in conjunction with a family and the family's identified support system;~~

~~3. Agreed upon by the participants; and~~

~~4. Signed by all parties identified to participate in the Prevention Plan [prevention plan], unless a party is unwilling or unable to sign.~~

~~(13) [(12)] If an investigation or assessment [a FINSAs] is conducted as a result of a child being referred pursuant to Section 2(4)(b)8<sub>2</sub> of this administrative regulation, the cabinet shall develop a Prevention Plan in accordance with 42 U.S.C. 5106a(b)(2)(B)(iii).~~

~~(14) [(13)] Collateral contact shall be made pursuant to KRS 620.030, 620.040, and 620.050.~~

~~(15) [(14)] (a) A medical or psychological examination may be required if a report of child abuse, neglect, or dependency alleges that a child has suffered physical or sexual harm or emotional injury.~~

~~(b) A medical examination shall be conducted in accordance with KRS 620.050(14).~~

~~(16) [(15)] Cabinet staff shall coordinate an investigation with a children's advocacy center governed by 920 KAR 2:040, in accordance with KRS 620.040(6) and (7).~~

~~(17) [(16)] Pursuant to KRS 620.030(5), an agency, institution,~~

~~or facility serving the child or family shall provide cooperation, assistance, and information necessary for the cabinet to conduct an investigation or assessment [FINSAs].~~

~~(18) [(17)] Photographs may be taken of a child or a child's environment during a protective services investigation or assessment [FINSAs] in accordance with KRS 620.050(14).~~

~~(19) [(18)] An interview with a child shall be conducted pursuant to KRS 620.040(6).~~

~~(20) [(19)] (a) A child sexual abuse or human trafficking investigation shall be conducted jointly with law enforcement and other multidisciplinary team members pursuant to KRS 431.600(1) and (8), 620.040(3), and 42 U.S.C. 5106a(b)(2)(B)(xi).~~

~~(b) The cabinet's primary responsibility shall be the protection of the child.~~

~~(21) [(20)] If there is reason to believe a child is in imminent danger, or if a parent or caretaker of a child refuses the cabinet entry to a child's home or refuses to allow a child to be interviewed, the cabinet may request assistance:~~

~~(a) From law enforcement; or~~

~~(b) Through a request for a court order pursuant to KRS 620.040(5)(a).~~

~~(22) [(21)] (a) If the court issues a search warrant for execution by law enforcement, cabinet staff may accompany law enforcement officers.~~

~~(b) Except as provided in KRS 605.090(3), the cabinet shall not remove a committed child from the child's home without a court order.~~

~~(23) [(22)] At the request of law enforcement, the cabinet shall, pursuant to KRS 620.040(3):~~

~~(a) Provide assistance in interviewing an alleged child abuse victim in a noncaretaker report; and~~

~~(b) Not be the lead investigator in a noncaretaker investigation. [(23) In accordance with 42 U.S.C. 5106a(b)(2)(B)(v), the cabinet may refer a child or a child's family to a state or community resource according to the identified need of the child and family.]~~

Section 4. Alleged Perpetrators of Abuse, Neglect, or Dependency Age Twelve (12) to Eighteen (18). (1) A report of child abuse, neglect, or dependency involving alleged perpetrators in a care-taking role age twelve (12) to eighteen (18) [r] shall be subject to investigation or assessment [a FINSAs].

(2) If substantiated, a child age twelve (12) to eighteen (18) shall be identified as the alleged perpetrator.

Section 5. Child Fatality or Near Fatality Investigations. (1) The cabinet shall investigate a report of child fatality or near fatality alleged to be the result of abuse or neglect in accordance with KRS 620.040.

(2) If there is a surviving child in the care of the alleged perpetrator, the cabinet shall determine the safety of the surviving child through immediate assessment in accordance with this administrative regulation.

(3) If a child fatality or near fatality allegedly due to abuse or neglect occurs, cabinet staff shall immediately notify the Office of the Director of the Division of Protection and Permanency.

(4) If a fatality or near fatality occurs to a child in the custody of the cabinet in an out-of-home placement, the cabinet shall make an immediate effort to notify:

(a) The biological or legal parents; and

(b) The Office of the Director of the Division of Protection and Permanency.

(5) If parental rights have been terminated, and there are special circumstances including ongoing contact with the child, the cabinet shall notify a child's biological or legal parents of the child's fatality or near fatality.

(6) The cabinet shall notify the Department of Public Advocacy, Protection and Advocacy Division, in the Justice and Public Safety Cabinet if:

(a)1. A child identified as a protection and advocacy client dies as a result of alleged abuse or neglect; and

2. The alleged perpetrator is a person exercising custodial control or supervision; or

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(b) A child fatality has occurred as a result of:

1. Placement in a seclusion room pursuant to 922 KAR 1:390;
  - or
  2. Therapeutic hold applied pursuant to 922 KAR 1:300.
- (7) The cabinet shall notify the following persons, in writing, of a fatality of a child in the custody of the cabinet:
- (a) Judge of the committing court; and
  - (b) Guardian ad litem for the deceased child.
- (8) The cabinet may make public disclosure of a fatality or near fatality in accordance with:
- (a) KRS 620.050(5) and (12); and
  - (b) 42 U.S.C. 5106a(b)(2)(A)(x).
- (9) If the alleged perpetrator was not a parent, guardian, or person exercising custodial control or supervision, notification of the child fatality or near fatality shall be in accordance with KRS 620.030(1).
- (10) The cabinet shall:
- (a) Be in compliance with KRS 620.050(12) in cases where the cabinet has had prior involvement; and
  - (b) Provide annual reporting in accordance with 42 U.S.C. 5106a(d)(4)(5)(6)(11).
- (11) If a child fatality or near fatality occurs in a licensed facility, the cabinet shall notify the licensing authority in accordance with 42 U.S.C. 5106a(b)(2)(A)(ix).

Section 6. Reports of Child Abuse, Neglect, or Dependency in Cabinet-approved Homes or Licensed Facilities. (1) Pursuant to KRS 620.030(5), the cabinet shall have the authority to obtain necessary information to complete an investigation in a report of child abuse, neglect, or dependency in a:

- (a) Child-caring facility licensed in accordance with 922 KAR 1:300 or its subcontractor;
- (b) Child-placing agency licensed in accordance with 922 KAR 1:310 or its subcontractor;
- (c) Child-care center licensed in accordance with 922 KAR 2:090;
- (d) Family child-care home certified in accordance with 922 KAR 2:100;
- (e) Child care provider registered in accordance with 922 KAR 2:180; or
- (f) Foster, adoptive, or respite care provider[Resource] home approved pursuant to 922 KAR 1:350.

(2) If a report of alleged child abuse, neglect, or dependency in a home approved pursuant to 922 KAR 1:310 or 922 KAR 1:350 is accepted[received], the designated cabinet staff shall:

- (a) Immediately contact the service region administrator or designee; and
  - (b) Assign staff to conduct the investigation.
- (3) If a report of alleged child abuse or neglect in a licensed child-care center, a certified family child-care home, or a registered child care provider is accepted[received], cabinet staff shall:

- (a) Notify the cabinet's Division of Child Care to share information and request assistance in locating alternate care if needed; and
- (b) Conduct an investigation.

(4) If a report of alleged child abuse or neglect in a licensed child-caring facility, child-placing agency placement, certified family child-care home, or licensed child-care center is accepted[received], cabinet staff shall:

- (a) Notify the Office of the Inspector General, Division of Regulated Child Care; and
- (b) Conduct an investigation.

1. If possible, an investigation shall be coordinated and conducted jointly with the Division of Regulated Child Care. However, if not possible, the cabinet shall proceed with an investigation.

2. [In a joint investigation:] a. An entrance interview with the facility administrator or designee shall be conducted; and

b. The nature of the report shall be outlined without disclosing the name of the reporting source.

3. If the cabinet substantiates the report of child abuse or neglect and the alleged perpetrator is an employee of the facility, the cabinet shall notify the provider or program director within thirty

(30) working days, unless a necessary extension is granted by the designated cabinet staff in a supervisory role.

(5) The cabinet shall share written findings of an investigation with the Division of Child Care for a:

- (a) Licensed child-care center;
- (b) Certified family child-care home; or
- (c) Registered child care provider.

(6) The cabinet shall share written findings of an investigation with the Office of Inspector General~~[Division of Regulated Child Care]~~ for a:

- (a) Licensed child-care center;
- (b) Certified family child-care home;
- (c) Registered child care provider;
- (d) Licensed child-caring facility; or
- (e)[(d)] Licensed child-placing agency.

(7) As soon as practical after a determination has been made that a child is in imminent danger or that a child needs to be removed, verbal or written notification shall be provided to the Division of Child Care or to the Office of the Inspector General.

Section 7[6]. Interviewing a Child in a School Setting. (1) Pursuant to KRS 620.030(5), the cabinet may, upon receipt of a report of child abuse or neglect, initiate an investigation or assessment[a-FINSA] at a school, which may include the review and copying of relevant school records pertaining to the child.

(2) If initiating an investigation or assessment[a-FINSA] at a school, the cabinet shall:

- (a) Inform appropriate school personnel of the need to interview a child regarding the report; and
- (b) Give necessary information concerning the allegation and investigation only to school personnel with a legitimate interest in the case.

Section 8[7]. Investigation of an Employee of the School System. If a report of child abuse or neglect involving school personnel is accepted[received], the following shall apply:

(1) An investigation shall be conducted;

(2) If the allegation is made about a school employee in a caretaker role of a child, the cabinet shall, if possible, conduct an interview away from the school grounds, with each of the following persons:

- (a) The child;
- (b) The parent or legal guardian;
- (c) The alleged perpetrator; and
- (d) Other collateral source, if any, in accordance with Section 3(14)[(13)] of this administrative regulation;

(3) The findings shall be shared with the custodial parent and the alleged perpetrator;

(4) The cabinet shall notify the appropriate supervisor of the alleged perpetrator, in writing, of the following:

- (a) That an investigation has been conducted;
- (b) The results of the investigation; and

(c) That the alleged perpetrator has the right to appeal pursuant to 922 KAR 1:480; and

(5) A person desiring other information shall employ the open records procedure, as described in 922 KAR 1:510.

Section 9[8]. Written Notice of Findings of Investigation. The cabinet shall provide notification to specified government officials in accordance with KRS 620.040(1) or (2) and 42 U.S.C. 5106a(b)(2)(B)(ix).

Section 10[9]. Substantiation Criteria and Submission of Findings. (1) The cabinet shall use the definitions of "abused or neglected child" in KRS 600.020(1)~~[and "dependent child" in KRS 600.020(20)]~~[(19)] in determining if an allegation is substantiated.

(2) A finding of an investigation or assessment[a-FINSA] shall be based upon the:

- (a) Information and evidence collected by the cabinet during the report's investigation or assessment[FINSA]; and
- (b) Condition that is present, rather than an action taken to remediate an issue or concern pertaining to a child's health, safety,

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or welfare.

(3) Cabinet staff[A social service worker] may find and substantiate abuse or[.] neglect, or make a services needed finding,[dependency] at any point during an investigation or assessment[.] FINSA,] or prior to case closure and aftercare planning in accordance with Section 12[44] of this administrative regulation, if preponderance of the evidence exists.

(4)(a) At the completion of an investigation or assessment involving a caretaker, the cabinet shall make a finding of:

- 1. Unsubstantiated child abuse or neglect;
- 2. Substantiated child abuse or neglect;
- 3. Child fatality or near fatality related to abuse or neglect;
- 4. Unable to locate the child;[or]
- 5. Services needed for the child or child's family, which may

**include a dependent child; or**

**6. Closed, which may include completed service provision.**

(b) At the completion of an investigation[or assessment] involving human trafficking of a child by a non-caretaker, the cabinet shall make a finding of:

- 1. Confirmed human trafficking;
- 2. Not confirmed human trafficking; or
- 3. Unable to locate the child.

(5)[(4)] A cabinet finding shall not be a judicial finding.

(6)[(5)] The cabinet staff[s]social service worker[s] supervisor or designee shall review and approve the final finding of the investigation or assessment[FINSA].

(7)[(6)] **Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet shall send a notice of finding[DPP-152, Child Protective Service (CPS) Substantiated Investigation Notification Letter,] and notice of the perpetrator's right to appeal in accordance with 922 KAR 1:480, Section 3, [shall be]:**

(a)[sent] to the **alleged or substantiated** perpetrator by certified mail to the last known address of the perpetrator[.] or

(b) Given to the perpetrator, in person, with a witness signature to document that the perpetrator received the notice].

(8)[(7)] **Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet[A notice of finding][DPP-152] shall[be]:**

(a) **Send a notice of finding[Sent]** to the child's parent or guardian by certified mail; or

(b) **Give a notice of finding[Given]** to the parent or guardian, in person, with the parent or guardian and a witness signature to document receipt of the notice.

(9) The cabinet's notice of a substantiated finding of child abuse or neglect shall include:

(a) The factual basis for the finding of child abuse or neglect;

(b) The results of the investigation;

(c) Information about the perpetrator's right to appeal the substantiated finding in accordance with 922 KAR 1:480; and

(d) A statement informing the perpetrator that the perpetrator's name shall be added to the central registry in accordance with 922 KAR 1:470.

Section 11[40]. Appeals. (1) The perpetrator of a substantiated finding of child abuse or neglect may request a hearing in accordance with 922 KAR 1:480.

(2)[If an administrative hearing is held, the secretary of the Cabinet for Health and Family Services or designee shall issue the final order.

(3) A further appeal may be requested through circuit court in accordance with KRS 13B.140 and 13B.150.

(4) A person may have additional hearing rights as specified in 922 KAR 1:320.

Section 12[44]. Closure and Aftercare Planning. (1)(a) A decision to close a child protective services case shall be based on[.] (a) evidence that the factors resulting in the child abuse, neglect, or dependency have been resolved to the extent that the family is able to:

- 1. [(a)][1.] Protect the child; and
- 2. [(b)][2.] Meet the needs of the child[.] or

(b) A lack of legal authority to obtain court ordered cooperation

from the family].

**(b) Prior to a case's closure in accordance with paragraph (a) of this subsection, designated cabinet staff in a supervisory role shall review and agree to the decision to close the child protective services case.**

(2) If the cabinet does not have the authority to obtain court-ordered cooperation from a family, the cabinet shall close the child protective services investigation or assessment.

(3) **Unless court-ordered cooperation from the family cannot be obtained in accordance in subsection (2) of this section,** a child protective services case shall not be closed if withdrawal of services places a child at risk of abuse, neglect, or dependency.

(4)[(3)] A family shall be:

(a) Notified in writing of the decision to close the protective services case; and

(b) Advised of the right to a fair hearing in compliance with 922 KAR 1:320, Section 2.

(5)[(4)] Aftercare planning shall link a family to community resources for the purpose of continuing preventive measures if the cabinet discontinues services in accordance with this section.

(6)[(5)] The Aftercare Plan shall be developed upon the completion of an investigation or[family in need of services] assessment, if an issue or concern identified by the cabinet falls below the level that triggers a protection services case being opened.

(7)[(6)](a) When it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop the Aftercare Plan.

(b) The focus of the Aftercare Plan shall be to prevent a recurrence of abuse, neglect, or dependency to the child in the home.

(8)[(7)] The cabinet may open a child protective services case in accordance with 922 KAR 1:140, 1:400, 1:410, or 1:430.

(9)[(8)] The cabinet may request the assistance of a court of competent jurisdiction to protect the child in accordance with KRS 620.070.

Section 13[42]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ["DPP-152, Child Protective Service (CPS) Substantiated Investigation Notification Letter", 6/04;

(b) "Aftercare Plan", 2/04; and

(b)[(c)] "Prevention Plan", 6/04.

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

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 11 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or assessment of abuse, neglect, or dependency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish child protective services procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing

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procedures for child protective services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by establishing cabinet procedures for a child protection investigation or assessment of abuse, neglect, or dependency.

(2) If 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 changes this administrative regulation by making initiation timeframes for a cabinet child protective services investigation more consistent with timeframes of other states or recognized national practice, thereby improving worker safety and the service provision to the child and the child's family. The amendment also incorporates recently enacted legislation, namely Tucker's Law (2017 Ky. Acts ch. 188) regarding the use of unannounced visits and updates consistent with 2017 Ky. Acts ch. 191. The amendment removes the term "family-in-need-of-services assessment" or "FINSA", which is no longer a track for an accepted referral for services. The amendment incorporates current provisions of 922 KAR 1:420, governing the investigation of child fatalities or near fatalities, a subset of child protective services investigations. The amendment clarifies and lists the cabinet's findings following an investigation. In addition, the amendment makes substantiation notice requirements for child protective services investigations more consistent with adult protective services practices for perpetrators eligible for the caregiver misconduct registry. Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The majority of changes resulting from the amendment to this administrative regulation ensure congruency and compliance with recently enacted legislation, the Red Tape Reduction initiative, business processes embedded in the state's information technology system or already employed within the agency, and other administrative regulations governing the provision of child welfare services. The more substantive change entails the proposed revision of initiation timeframes for child protective services investigations.

Currently, Kentucky has some of the most stringent initiation timeframes in the nation, particularly for children at high risk (i.e., one-hour initiation timeframe upon acceptance of the report). A one-hour initiation timeframe is not logistically feasible in many areas of the state due to traffic, limited infrastructure, county size, and geographical features. A one-hour initiation timeframe also inhibits adequate preparations prior to the cabinet worker's initial engagement of the child and family, such as conducting background checks, reviewing prior history with the agency, and securing law enforcement assistance, thereby enhancing worker and child risks and compromising the quality of service provision. A one-hour timeframe also compromises a cabinet worker or team's ability to manage multiple accepted intakes simultaneously. The cabinet's federal funding is further threatened by the more stringent timeframes of present day due to the cabinet's inability to often times comply with the timeframes. A child requiring such immediacy should result in notification to law enforcement and perhaps emergency medical services.

The proposed new initiation timeframes resulted from the cabinet's efforts in 2009, including a literature review, technical assistance provided through federal funders, data analysis, child fatality reviews, and comments solicited from child advocacy groups. The work in 2009 was more recently revisited as a part of the cabinet's child welfare reform efforts and included additional inputs made possible through Kentucky's participation in the Three Branch Institute to Improve Child Safety and Prevent Child Fatalities, a unique technical assistance opportunity supported through the National Governors Association, the National Conference of State Legislatures, Casey Family Programs, the National Council of Juvenile and Family Court Judges, and the National Center for State Courts.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of

the authorizing statutes through its enhancement of cabinet procedures pertaining to the investigation and assessment of child abuse, neglect, and dependency.

(d) How the amendment will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the statutes through higher quality service provision to vulnerable children and families.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: According to the cabinet's Statewide Child Protective Services Intake Fact Sheet (June 1, 2016, through May 31, 2017), the cabinet received 131,098 intakes with nearly 55,589 meeting acceptance criteria. Of those, 14,514 resulted in a finding of substantiated child abuse or neglect involving 27,296 unique children. Approximately 1,600 resulted in a services needed finding.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required on the part of regulated entities above and beyond those that are statutorily prescribed or originally prescribed through 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): Regulated entities will experience no new or additional cost as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the amendment's enhancements to the cabinet's provision of services, namely quality initial engagement of the child, the family, and the use of unannounced visits. The amendment may also indirectly benefit staff retention due to the applicable of more realistically feasible and manageable initiation timeframes benefiting the safety of the child being served, the cabinet worker(s) involved, and worker performance and outcomes.

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

(a) Initially: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet staff's provision of child protective services is funded by the federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 5106a

2. State compliance standards. KRS 194A.050(1), 605.150(1),

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620.029(2)(a), 620.180(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standards, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 5106a, KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1)

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:430. Child protective services in-home case planning and service delivery.

RELATES TO: KRS 600.010, 600.020, 605.130, 620.050(3), 620.072, 42 U.S.C. 620-629m, 1397-1397h, 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 605.150(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1)[194B.050(4)] requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Health and Family Services, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration

of the cabinet and its programs. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605 - Administrative Matters. This administrative regulation establishes cabinet procedures for delivery of ongoing in-home case planning and service delivery for child protection cases of abuse, neglect, or dependency[,] in compliance with KRS 605.130.

Section 1. Definitions. (1) "Cabinet" is defined by[at] KRS 600.020(7)[(6)].

(2) "Case planning" means a process during which[where] the cabinet works with the family and other involved parties to identify conditions within a family, which may cause the threat of harm to a child and that need to be changed, and the services necessary to bring about familial changes in order to facilitate a child's safety and well being in the home environment.

(3) "Permanency goals" means the goals for permanency established by[are described at] 922 KAR 1:140, Section 4.[(4)] "Prevention plan" means a set of specific strategies and behaviors the family or individual intends to practice in order to prevent reoccurrence of an abusive or neglectful situation.].

Section 2. In-Home Case Planning. (1) If the cabinet has determined that a child shall remain in the home, the cabinet shall review the results of the investigation[,] or[of the family in need of services] assessment conducted pursuant to 922 KAR 1:330[; Section 3(12)(a)1 and 2;] to include:

- (a) Reviewing the case history;
(b) Initiating contact with a family;
(c) Completing a case plan[P&P-1282, Family Case Plan,] with input from the family and community supports,[if parents agree] pursuant to 922 KAR 1:140, Sections 3 and 5; and
(d) Completing a Prevention Plan in accordance with 922 KAR 1:330[CPS prevention plan], if indicated, with input from family and community supports.

(2) An[assessment][The Continuous Quality Assessment (CQA)][shall be completed or reviewed in accordance with 922 KAR 1:330, Section 3(9)][(8)].

(3) Another assessment[The CQA] shall:
(a) Be completed at least every six (6) months prior to each periodic case plan; and
(b) Include:

- 1. Information gathered during contacts with the family and service providers;
2. Considerations of the level of cooperation and efforts made by the family members to reduce threat and address the high-risk behaviors that brought the family into contact with the department;
3. The family's progress towards case plan objectives; and
4. Further services or case actions necessary to achieve the case plan objectives and case closure.

[(3)][(4)] The cabinet shall advise a family receiving in-home case planning and service delivery[A DCBS-154, Protection and Permanency Service Appeal Request, shall be mailed or hand delivered to a family, advising them] of the right to a fair hearing in accordance with 922 KAR 1:320.

Section 3. Case[Service Delivery] Plan. (1) A case[If a case plan is required, a service delivery plan shall be provided as specified in a family's case plan. A service delivery] plan shall encompass:

- (a) Identified expectations of a family and the cabinet; and
(b) Initiating linkage to community resources, including services to:

- 1. Address the high-risk behaviors of the family that brought the family to the attention of the cabinet; and
2. Meet the safety, health, and developmental needs of the child.

(2) If a child continues to reside in the home of a parent or guardian, the cabinet shall:

- (a) Have monthly[face-to-face] contact with the family:
1. To evaluate the family's progress; and
2. In accordance with KRS 620.072; and



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(b) Make a monthly in-home, face-to-face visit with the family and child to:

1. (a) Observe the interaction between parent, child, and siblings;
  2. (b) Determine the appropriateness of interactions;
  3. (c) Determine if parenting skills need improvement; and
  4. (d) Identify the protective capacity of the parent.
- (3) If the home environment was indicated as an issue in the case plan, an in-home visit to assess the home shall be conducted.

Section 4. Case Closure and Aftercare Planning. (1) A new assessment in accordance with Section 2(2) of this administrative regulation [CGA] shall be completed before an in-home case is closed.

(2) The decision to close a ~~child protective services assessment or~~ case shall be:

(a) Based on documentation that the original factors resulting in abuse, neglect, or dependency, or the risk of the abuse, neglect or dependency, has been resolved to the extent that the parent or guardian is able to:

1. (a) Protect the child; and
2. (b) Meet the needs of the child; and

(b) Reviewed and approved by the cabinet staff's supervisor or designee.

(3) Consideration for closure of a child protective service case shall ~~may~~ occur if the following conditions are met:

- (a) The child is no longer in need of protection; and
- (b) The case planning or permanency goals have been achieved.

(4) The family shall be:

(a) Notified in writing of the decision to close the protective services case; and

(b) ~~Advised~~ [Given a DCBS-154, Protection and Permanency Service Appeal Request, in person or by certified mail, advising] of the right to a fair hearing in accordance [compliance] with 922 KAR 1:320; Section 2].

(5) If it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop an aftercare plan in accordance with 922 KAR 1:330 by:

- (a) Linking the family to community resources;
- (b) Continuing preventative measures; and
- (c) Instructing the family in how to use the aftercare plan.

(6) The focus of the aftercare plan shall be to prevent a reoccurrence of child abuse, neglect, or dependency. [Section 5. Incorporation by Reference. (1) "Prevention Plan", edition 11/00, is incorporated by reference.

~~(2) This material made 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.]~~

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 19, 2017

FILED WITH LRC: October 11, 2017 at 4 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures for delivery of ongoing in-home case planning and service delivery for child protection cases of abuse, neglect, or dependency in compliance with KRS 605.130.

(b) The necessity of this administrative regulation: This administration is necessary to establish cabinet procedures for in-home child protection services.

(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 procedures for delivery of ongoing in-home case planning and service delivery for child protection cases of abuse, neglect, or dependency, in compliance with KRS 605.130.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in effective administration of the statutes by establishing procedures for in-home child protection services.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation removes outdated incorporated materials and makes technical and conforming changes to align this administrative regulation with recently enacted legislation and other administrative regulations governing child welfare services provided by the cabinet.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the administrative regulation for congruency with recently enacted legislation and other administrative regulations governing child welfare services provided by the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment made to this administrative regulation conforms to the content of the authorizing statutes through its update of cabinet procedures for delivery of ongoing in-home case planning and service delivery for child protection cases of abuse, neglect, or dependency.

(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 update of in-home child protective services with recently enacted legislation and other administrative regulations governing child welfare services provided by the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: From June 1, 2016, through May 31, 2017, the cabinet made 14,514 findings of substantiated child abuse and neglect. For maltreated children who remain in their homes of origin and whose situation warrants continued cabinet involvement to mitigate risk factors present, the cabinet provides in-home services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment is largely technical and conforming in nature. There is no new burden anticipated for regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment will impose no new or additional cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment clarifies and updates cabinet procedures for the provision of in-home child protection services benefiting the safety of children who are involved in substantiations of child abuse and neglect or who are at risk for maltreatment.

(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 technical and conforming in nature. There is no new or additional cost projected to the administrative body as a result of this administrative regulation.

(b) On a continuing basis: There is no new or additional cost projected to the administrative body as a result of this administrative regulation.

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

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The cabinet staff's provision of child protective services is funded by the federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 620-629m, 1397-1397h, 5106a

2. State compliance standards. KRS 194A.050(1), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 620-629m, 1397-1397h, 5106a

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standards, or additional or different responsibilities or requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by 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), 605.150(1), 42 U.S.C. 620-629m, 1397-1397h, 5106a

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

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

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

(c) How much will it cost to administer this program for the first year? There is no new or additional cost projected for the administrative body in the first year as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no new or additional cost projected for the administrative body in subsequent years as a

result of 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 Community Based Services Division of Protection and Permanency (Amended After Comments)

#### 922 KAR 1:470. Central registry.

RELATES TO: KRS 17.165(6)(5), 61.876, 160.151, 160.380, 194A.380-194A.383, 199.466, 199.896(19), 199.8982(1)(a), 403.352, 600.020(1), (40), (61), (62)(54), (55), 620.050(5), 625.050-625.120, 42 U.S.C. 671(a)(20), 5106a(b), 9858f(2)(A)(viii), (ix), (x)

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(4), 605.150, 2006 Ky. Acts ch. 252 Part 1, H.10(3)

NECESSITY, FUNCTION, and CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services[secretary] to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 605.150 permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(4), which authorizes the cabinet to perform services necessary for the protection of children. 2006 Ky. Acts ch. 252 Part 1, H.10(3) authorizes the secretary to promulgate administrative regulations necessary to prescribe criminal background investigation fee amounts. This administrative regulation establishes the procedure by which the cabinet shall conduct a child abuse or neglect check using information in the central registry.

Section 1. Definitions. (1) "Abused or neglected child" is defined by KRS 600.020(1).

(2) "Administrative review" means that the status of the individual subject to the central registry check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

(b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.

(3) "Child fatality" is defined by KRS 211.684.

(4) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(5) "Sexual abuse" is defined by KRS 600.020(61)(54).

(6)(3) "Sexual exploitation" is defined by KRS 600.020(62)(55).

Section 2. Central Registry. (1) The central registry shall include the name of each individual:

(a) Who has been found by the cabinet to have abused or neglected a child on or after October 1, 1998; and

(b)1. Who waived the right to appeal a substantiated finding of child abuse or neglect in accordance with:

a. 922 KAR 1:480;

b. 922 KAR 1:320; or

c. 922 KAR 1:330, Section 11[40]; or

2. Whose substantiated incident was upheld upon appeal.

(2) Each name shall:

(a) Remain on the central registry for a period of at least seven (7) years; and

(b) Be removed from the central registry after a period of seven (7) years if:

1. No additional incident of child abuse or neglect has been substantiated by the cabinet since the time of the incident for which the individual's name was placed on the registry; and

2. Cabinet records indicate that the incident for which the

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individual's name was placed on the registry did not relate to:

- a. Sexual abuse or sexual exploitation of a child;
- b. A child fatality related to abuse or neglect;
- c. ~~A near fatality related to abuse or neglect~~[A criminal conviction related to child abuse or neglect;
- d. ~~A civil judicial determination related to child abuse or neglect];~~ or
- d.[e.] Involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.

(3) This administrative regulation shall not apply to cabinet background checks required by 922 KAR 1:490[~~, regarding foster or adoptive services~~].

(4) This administrative regulation shall not limit the cabinet's ability to disclose information in accordance with KRS 620.050 and 42 U.S.C. 5106a(b)(2)(B)(viii), (ix), or (x)[~~5106a(b)(2)(A)(viii), (ix), and (x)~~].

Section 3. Procedure for Requesting a Central Registry Check.

(1) If information from the central registry is required by law, a request for a central registry check may be made by an:

- (a) Individual;
- (b) Organization; or
- (c) Other entity.

(2) The cabinet shall conduct a check of the central registry for each individual who:

- (a) Submits a request for a check of the central registry in accordance with subsection (4) of this section; and
  - (b)1. Applies for initial licensure;
  - 2. Is hired by, or volunteers with, an entity required by law to obtain information contained in the central registry; or
  - 3. Is hired by, or volunteers with, an entity that may require a central registry check as a condition for working with children on a regular basis.

(3) An individual who is not required by law to obtain information contained in the central registry shall submit an open records request in accordance with 922 KAR 1:510.

(4) A request for a central registry check shall be made:

(a) By submitting to the cabinet:

1.a.[(a)] A completed DCC-374, Child Care Central Registry Check, for an individual in child care as specified by 42 U.S.C. 9858f, KRS 199.466, or Title 922 KAR Chapter 2; or

b. A completed[~~form~~] DPP-156, Central Registry Check, for an individual required by a law not specified in clause a. of this subparagraph no later than five (5) working days after:

(i)[1.] The date of employment of an individual required by law to submit to a central registry check; or

(ii)[2.] A volunteer's first day, if the volunteer is required by law to submit to a central registry check; and

2.[(b)] A nonrefundable fee of ten (10) dollars:

4.]a.(i) Submitted by check or money order; and

(ii)[b.] Made payable to the Kentucky State Treasurer; or

b.[2.] Made available through a prepaid account established with the cabinet; or

(b) Through another cabinet system, such as the Kentucky National Background Check Program established in accordance with 906 KAR 1:190.

(5) A state requesting a child abuse or neglect check from the cabinet[~~Kentucky~~] as required by 42 U.S.C. 671(a)(20) shall follow the procedures described in 922 KAR 1:490, Section 4.

Section 4. Administrative Review. (1) The cabinet shall indicate on a central registry check if the individual is pending administrative review by the cabinet.

(2) An individual subject to administrative review in accordance with this section may submit an open records request in accordance with 922 KAR 1:510.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-156, Central Registry Check," 1/18[~~7/17~~]; and

(b) "DCC-374, Child Care Central Registry Check," 1/18[~~7/17~~][edition 02/08, is incorporated by reference].

(3)[(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.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 10, 2017

FILED WITH LRC: October 11, 2017 at 4 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures by which the cabinet shall conduct a child abuse or neglect check using information in the central registry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish cabinet procedures for child abuse and neglect checks of the central registry.

(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 cabinet procedures for conducting child abuse and neglect checks of the central registry.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of cabinet procedures for child abuse and neglect checks of the central registry.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation changes the criteria for retaining an individual on the central registry by adding a near fatality related to child abuse or neglect and removing court-related criteria. In addition, this amendment authorizes the cabinet to release information about individuals pending administrative review, which includes being subject to matters still under investigation, assessment, or appeal. The amendment updates material incorporated by reference and adds a form for the exclusive use of child care staff members to request a child abuse and neglect check of the central registry. Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to recognize near fatalities of a child related to abuse or neglect warrant retention of an individual on the central registry. In addition, the amendment recognizes criminal background checks as a better source of court-related information. The amendment also allows the cabinet to process child abuse and neglect check requests on individuals who have matters pending with the cabinet, thereby facilitating more timely check processing. The amendment makes necessary updates to facilitate workload distribution in the implementation of legislation enacted during the 2017 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its correction and update of cabinet procedures for child abuse and neglect checks of the central registry.

(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 enhancement of the cabinet's child abuse and neglect check procedures to support the enforcement of recently enacted legislation mandating more individuals to undergo such checks.

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(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals who are subject to statutory and regulatory requirements involving a child abuse and neglect check conducted by the cabinet are impacted by this administrative regulation. From January 1, 2017, through March 30, 2017, the cabinet processed approximately 18,000 child abuse and neglect checks.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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 still be required to submit a completed form and fee or go through another cabinet system to request a child abuse and neglect check. However, there will be a form to distinguish child care staff members' requests from other child abuse and neglect check requests. This will ensure that requests from child care staff members are directed to the Division of Child Care for processing and workload division to support timeliness.

(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 being applied to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the clarity and improvements in the processing of child abuse and neglect checks as provided through the amendment.

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

(a) Initially: The cabinet will implement this administrative regulation within existing appropriations and revenues.

(b) On a continuing basis: The cabinet will implement this administrative regulation within existing appropriations and revenues.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the cabinet's child abuse and neglect checks is largely derived from the General Funds and the check fee. The database that houses protection and permanency records is also supported through federal Title IV-E (of the Social Security Act) 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: The fee charged by the cabinet for a child abuse and neglect check is remaining unchanged. The fees collected support cabinet programming per the authorizing legislative act.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation enforces a fee established by the General Assembly in 2006 Ky. Acts ch. 252.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be implemented in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

- 1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671(a)(20), 5106a(b), 9858f
2. State compliance standards. KRS 194A.050(1), 605.130(4), 605.150, 2006 Ky. Acts ch. 252 Part 1, H.10(3)
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(20), 5106a(b), 9858f
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 requirements, or additional or different responsibilities of requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements. The administrative regulation does not impose stricter requirements, or additional or different responsibilities of 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 is impacted by this administrative regulation. Public school districts are also impacted by this administrative regulation through the statutory mandate for personnel and others on the grounds of a public school to undergo a child abuse and neglect check conducted by the cabinet. Other governmental organizational units that require staff or providers to undergo child abuse and neglect central registry checks, such as the Department of Juvenile Justice or the Department for Medicaid Services, are 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), 605.130(4), 605.150, 2006 Ky. Acts ch. 252 Part 1, H.10(3), 42 U.S.C. 671(a)(20), 5106a(b), 9858f

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 enforces a legislatively enacted fee for child abuse and neglect checks. The fees collected support cabinet programming per the authorizing legislative act.

(b) How 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 enforces a legislatively enacted fee for child abuse and neglect checks. The fees collected support cabinet programming per the authorizing legislative act.

(c) How much will it cost to administer this program for the first year? The cabinet will implement this administrative regulation within existing appropriations and revenues.

(d) How much will it cost to administer this program for subsequent years? The cabinet will implement this administrative regulation within existing appropriations and revenues.

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 1:480. Appeal of child abuse and neglect investigative findings.

RELATES TO: KRS Chapter 13B, 13B.010(2), (7), 23A.010, 194A.005(1), 600.020(1), (7)[(6)], 620.050(5), 45 C.F.R. 205.10, 42 U.S.C. 1320d-1320d-9, 1397-1397e, 5106a(b)(2)(B)(viii), (ix)]

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 5106a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds. 42 U.S.C. 5106a requires the Secretary of Health and Human Services to make grants for the purpose of assisting states in improving the delivery of child

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protective services, including procedures for appealing and responding to appeals of substantiated reports of abuse and neglect. In order to maintain continued eligibility after the initial grant application, 42 U.S.C. 5106a requires states to submit a plan every five (5) years thereafter assuring operation of a statewide program related to child abuse and neglect that includes provisions, procedures, and mechanisms by which a perpetrator who disagrees with an official finding of child abuse or neglect may appeal the finding. This administrative regulation establishes the cabinet's procedures for responding to appeals of child abuse and neglect investigative findings.

Section 1. Definitions. (1) "Abused or neglected child" is defined by KRS 600.020(1).

(2) "Administrative hearing" is defined by KRS 13B.010(2).

(3) "Appellant" means a perpetrator who requests an administrative hearing or on whose behalf an administrative hearing is requested by the perpetrator's legal representative.

(4) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7)(~~6~~).

(5) "Compelling need" means a hearing officer determines that a probability exists by which a child would be unable to reasonably communicate because of emotional distress produced by the perpetrator's presence.

(6) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal, including:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing.

(7) "Hearing officer" is defined by KRS 13B.010(7).

(8) "Perpetrator" means a person who, as a result of an investigation, has been determined by the cabinet to have abused or neglected a child.

Section 2. Right to Appeal. A person who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's investigative finding through an administrative hearing.

Section 3. Notification and Request for Appeal. (1) The cabinet shall provide to a perpetrator:

(a) Notice of a substantiated finding of child abuse or neglect in accordance with 922 KAR 1:330, Section 10[8]; and

(b) A copy of the DPP-155, Request for Appeal of Child Abuse or Neglect Investigative Finding, ~~form DPP-155, incorporated by reference~~.

(2) The cabinet shall disclose confidential information in accordance with 42 U.S.C. 5106a(b)(2)(B)(viii), (ix) to any federal, state, or local government entity, or an agent of a government entity, that has a need for the information in order to carry out its responsibility under the law to protect children from abuse and neglect.

(3) A request for appeal shall:

(a) Be submitted:

1. In writing by the appellant, with the assistance of the cabinet if the appellant is unable to comply without assistance; and

2. To the cabinet no later than thirty (30) calendar days from the date ~~of~~ the notice of a substantiated finding of child abuse or neglect is ~~postmarked~~ ~~mailed~~; or

~~b. Of delivery of the notice if not mailed;~~

(b) Describe the nature of the investigative finding;

(c) Specify the reason the appellant disputes the cabinet's substantiated finding of child abuse or neglect;

(d) Specify the name of each known cabinet staff person involved with the investigation; and

(e) Include a copy of the notice of a substantiated finding of child abuse or neglect if available.

(4)(a) Upon receipt of a written request for appeal, the cabinet shall confirm whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the matter:

1. Is not appealable; and

2. May be pursued through the service complaint process established by~~described in~~ 922 KAR 1:320, Section 4 or 10.

(5) The cabinet shall not dismiss a request for appeal as untimely if an appellant demonstrates good cause.

Section 4. Matters Not Appealable Through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing:

(a) A matter in which a civil court having competent jurisdiction:

1. Has heard evidence and made a final judicial determination that abuse or neglect of a child did or did not occur; or

2. Is currently engaged in legal proceedings regarding the same issue being appealed;

(b) A matter in which an appellant has been criminally charged and convicted of an action that is the basis of the cabinet's finding of abuse or neglect of a child;

(c) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(d) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;

(e) Failure to submit a written request for appeal within the time frame established by Section 3(3)(a) of this administrative regulation, unless an appellant demonstrates good cause; or

(f) An investigation that results in an unsubstantiated finding of abuse or neglect of a child.

(2) If an appellant is denied an administrative hearing in accordance with subsection (1)(a) of this section, the cabinet shall change its investigative finding:

(a) In accordance with a civil court's finding regarding abuse or neglect; or

(b) To a services needed finding in accordance with 922 KAR 1:330 and 42 U.S.C. 5106a(b)(2)(B)(v).

Section 5. Investigative Findings. (1) The cabinet shall reserve the right, in its sole discretion, to amend, modify, or reverse its investigative finding of child abuse or neglect at any time based upon:

(a) A review of the cabinet's records; or

(b) Subsequent discovery of additional information.

(2) If amendment, modification, or reversal of an investigative finding results in a substantiated finding of abuse or neglect of a child, the cabinet shall act in accordance with:

(a) Section 3(1) and (2) of this administrative regulation; and

(b) 922 KAR 1:330, Section 10(8).

Section 6. Administrative Hearing. (1) Each administrative hearing conducted by the cabinet or its designee shall be held in accordance with KRS Chapter 13B.

(2) The proceedings of an administrative hearing shall be disclosed only in accordance with KRS 194A.060, 620.050, 42 U.S.C. 1320d-1320d-9, 42 U.S.C. 1397-1397e, 42 U.S.C. 5106a, 920 KAR 1:060, 922 KAR 1:470, and 922 KAR 1:510~~by authority of state or federal law~~.

(3)(a) A hearing officer may, upon a determination of compelling need, permit a child to provide testimony in a manner in which the child is not able to hear or see the appellant.

(b) At the discretion of the child, the child's parent, or the child's legal guardian, a child required to testify in an administrative hearing may be accompanied by an adult who serves in a therapeutic or supportive capacity to the child.

(4) If a hearing officer orders the testimony of a child to be taken in accordance with subsection (3) of this section, the hearing officer shall permit the appellant to hear the testimony of the child.

Section 7. Recommended Order. (1) A copy of the recommended order shall be sent simultaneously to:

(a) Each party to the administrative hearing;

(b) The commissioner of the Department for Community Based Services; and

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(c) The secretary of the Cabinet for Health and Family Services or designee.

(2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS 13B.110(4) with the secretary, which shall:

(a) Be filed within fifteen (15) calendar days of the date the recommended order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each other party involved in the hearing.

Section 8. Final Order. (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.

(2)(a) Final administrative action shall be taken, unless waived by an appellant, within ninety (90) calendar days from the date of the request for an administrative hearing as required by 45 C.F.R. 205.10.

(b) If the appellant waives the ninety (90) calendar day requirement specified in paragraph (a) of this subsection, the hearing officer shall notify all parties to the hearing when final administrative action will be taken.

(3) An aggrieved party may petition for judicial review in accordance with:

(a) KRS 13B.140 to 13B.160; or

(b) KRS 23A.010.

Section 9. Incorporation by Reference. (1) "DPP-155, Request for Appeal of Child Abuse or Neglect Investigative Finding", 7/17[6/04], is incorporated by reference.

(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.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 10, 2017

FILED WITH LRC: October 11, 2017 at 4 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cabinet's procedures for responding to appeals of child abuse and neglect investigative findings.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish cabinet procedures for responding to appeals of child abuse and neglect investigative findings.

(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 cabinet procedures for responding to appeals of child abuse and neglect investigative findings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the administration of the statutes by establishing cabinet procedures for responding to appeals of child abuse and neglect investigative findings.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies that appeals must be received within thirty (30) calendar days of the notice of a substantiated finding of child abuse or

neglect's postmark. The amendment also allows the cabinet to continue with voluntary service provision to a family and a child if a court does not uphold the cabinet's substantiated finding of child abuse and neglect, thereby mitigating any remaining maltreatment risk factors for the child. The amendment also make numerous technical corrections for congruency with other child welfare administrative regulations and in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide clarity to regulated entities and to support child safety in cases in which the court did not uphold the cabinet's substantiated finding of child abuse and neglect. The amendment is also necessary to ensure alignment or congruency among child welfare administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its clarification and update of cabinet procedures for responding to appeals of child abuse and neglect investigative findings.

(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 clarification and update of cabinet appeal procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A percentage of all substantiated child abuse and neglect investigative findings result in an appeal request received by the Cabinet for Health and Family Services' Ombudsman's Office, and a percentage of those result in an administrative hearing. The cabinet averages approximately 400 appeal requests annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new or additional burden applied to 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 will be no new or additional costs borne by regulated entities as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will benefit regulated entities through its clarification and update of cabinet procedures for responding to appeals of child abuse and neglect investigative findings.

(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 technical and conforming in nature and is not projected to have a new or additional cost to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is not projected to have a new or additional cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Social Services Block Grant and Title IV-E (of the Social Security Act) funds are federal funds that support the implementation and enforcement of this administrative regulation. State General Funds are also utilized.

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

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

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(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

- 1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 5106a
2. State compliance standards. KRS 194A.050(1)
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 5106a
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by 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), 42 U.S.C. 5106a

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate any revenue for state or local government for the first full year it is in effect.

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is technical and conforming in nature and is not projected to have a new or additional cost to the administrative body.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is technical and conforming in nature and is not projected to have a new or additional cost to the administrative body.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:490. Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements.

RELATES TO: KRS 17.500-17.580, 199.011(6), (9)(7),

199.462(1), 211.684, 600.020(28), (40), (61), (62)(55), (56), 605.090(1)(b), (6), 605.120, 605.130, 620.050(5), Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, 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[program]. KRS 199.462(4) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, [and] a caretaker relative, and fictive kin. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including: (1) KRS 605.120(5) and (6) by which the cabinet is authorized to establish a program for kinship care; and (2) KRS 605.130(4) by which the cabinet shall perform such other services as may be deemed necessary for the protection of children. KRS 199.640(5) authorizes the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. This administrative regulation establishes background check requirements for caretaker relatives, kinship caregivers, fictive kin, or applicants seeking to provide foster or adoptive services. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, batter y, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

Section 1. Definitions. (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.

(2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

(b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.

(3) "Adolescent member of the household" means a youth who:

- (a) Resides in the home of:
1. An individual who applies for approval or has been approved to provide foster or adoptive services; or
2. A caretaker relative, fictive kin, or kinship caregiver;
(b) Is age twelve (12) through age seventeen (17); and
(c) Is not placed in the home by a state agency.

(4)(3) "Adult member of the household" means an adult who:

- (a) Resides in the home of:
1. An individual who applies for approval or has been approved to provide foster or adoptive services; or
2. A caretaker relative, fictive kin, or kinship caregiver; and
(b) Is eighteen (18) years of age or older.

(5)(4) "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child in the custody of the state under:

- (a) 922 KAR 1:350, Family Preparation; or
(b) 922 KAR 1:310, Standards for Child-Placing Agencies.
(6)(5) "Caretaker relative" means a relative[:(a)] with whom the child is, or shall be, placed by the cabinet[; and
(b) Who is seeking to qualify as a kinship caregiver in

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accordance with 922 KAR 1:130].

(7)[(6)] "Child fatality" is defined by KRS 211.684.

(8) "Child-placing agency" is defined by KRS 199.011(6)[(7)].

(9) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(10)[(7)] "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care in accordance with 922 KAR 1:130.

(11) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(12)[(8)] "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(13)[(9)] "Sexual abuse" is defined by KRS 600.020(60)[(55)].

(14)[(10)] "Sexual exploitation" is defined by KRS 600.020(61)[(56)].

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants. (1) An applicant, and each adult member of the household, shall complete a DPP-157, Background Checks for Applicants or Foster/Adoptive Parents, and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or
2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation[National Crime Information Database]; and

(d) An address check of the Sex Offender Registry.

(2) Prior to approval of an applicant, each adolescent member of the household shall complete a DPP-157 and submit to a child abuse or neglect check conducted by the cabinet.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:

(a) Been found by the cabinet to have:

1. [(a)] Committed sexual abuse or sexual exploitation of a child;

2. [(b)] Been responsible for a child fatality or near fatality related to abuse or neglect;

3. [(c)] Abused or neglected a child within the seven (7) year period immediately prior to the application; or

4. [(d)] Had parental rights terminated; or

(b) A matter pending administrative review. **An individual subject to administrative review in accordance with this paragraph may submit an open records request in accordance with 922 KAR 1:510.**

(4) An applicant shall not be approved if:

(a) A criminal records check reveals that the applicant, or adult member of the household, has a:

1. Felony conviction involving:

a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20); or

b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application;

2. Criminal conviction relating to child abuse or neglect; or

3. Civil judicial determination related to child abuse or neglect;

(b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or

(c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.

**(5) An individual identified in accordance with subsection**

**(3) of this section may submit an open records request in accordance with 922 KAR 1:510.**

Section 3. Procedure for Requesting a Cabinet Child Abuse or Neglect Check, a Criminal Record Check, and an Address Check of the Sex Offender Registry. Prior to approval of an applicant, a child-placing agency shall request a child abuse or neglect check, a criminal records check, and an address check of the Sex Offender Registry by submitting to the cabinet:

(1) A completed form, DPP-157, including the fee for a criminal background check; and

(2) Documentation required to request a child abuse or neglect check from the child welfare agency in each previous state of residence, if the applicant or adult household member has resided outside of the state of Kentucky in the previous five (5) years.

**(3) To the extent resources are available, the department shall post information about other states' child abuse and neglect checks on the department's Web site.**

Section 4. Request for a Child Abuse or Neglect Check from Another State. (1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) if [when] a:

(a) Completed DPP-157 or DPP-159, Background Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers, is submitted to the cabinet; or

(b) Request is received on agency letterhead and includes two (2) numeric identifiers.

(2) The cabinet shall:

(a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and

(b) Waive the fee[requirements] specified in 922 KAR 1:470; Section 3(4).

Section 5. Background Checks Required for a Caretaker Relative and Fictive Kin. (1) A caretaker relative, fictive kin, and each adult member of the household, shall complete a DPP-159 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1) [and in accordance with 922 KAR 1:130], by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet;

(c) An address check of the Sex Offender Registry; and

(d) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation[National Crime Information Database] if the caretaker relative, fictive kin, or adult household member has lived outside the state of Kentucky during the past five (5) years.

(2) An adolescent member of a caretaker relative's or fictive kin's household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet [in accordance with 922 KAR 1:130].

(3) A child abuse and neglect check conducted by the cabinet in accordance with subsection (1)(b) or (2) of this section shall include any finding consistent with Section 2(3) of this administrative regulation.

(4) A caretaker relative or fictive kin shall not be approved if a [an in-state] criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 2(4) of this administrative regulation.

Section 6. Approval. (1) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, approval of an applicant, fictive kin, or caretaker relative who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and



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(c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, an applicant, fictive kin, or caretaker relative may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

(a) An adolescent member of the household has:

1. Been found by the cabinet to have abused or neglected a child; or

2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or

(b) An adult member of the household has:

1. Been convicted of a nonviolent felony or misdemeanor;

2. Been found to have abused or neglected a child; or

3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 7. Reevaluation. (1) An approved foster or adoptive parent and each adult member of the household shall submit annually, prior to or during the anniversary month of initial approval, to:

(a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;

(b) A child abuse or neglect check conducted by the cabinet; and

(c) An address check of the Sex Offender Registry.

(2)(a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 2(1)(a) through (d) of this administrative regulation.

(b) If an adult becomes a new member of a kinship caregiver's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 5(1) of this administrative regulation.

(3) If an adolescent becomes a new member of an approved foster or adoptive parent or a kinship caregiver's household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 5(2) of this administrative regulation.

(4) If the cabinet has custody of a child placed with a caretaker relative or fictive kin:

(a) A new adult household member of a caretaker relative or fictive kin shall submit to background checks within thirty (30) calendar days of residence in the household in accordance with Section 5(1) of this administrative regulation; and

(b) A new adolescent household member of a caretaker relative or fictive kin shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 5(2) of this administrative regulation.

5) An annual address check of the Sex Offender Registry shall be completed for a kinship caregiver's eligibility redetermination in accordance with 922 KAR 1:130, Section 13(2).

~~6) If an annual address check indicates a match with the Sex Offender Registry, a report of abuse, neglect, or dependency shall be made in accordance with 922 KAR 1:330.~~

Section 8. Maintenance of Records. (1) A completed copy of each criminal records check conducted pursuant to Section 2(4) or 7(4) of this administrative regulation and the DPP-157 shall be maintained on behalf of each:

(a) Applicant;

(b) Foster or adoptive parent; and

(c) Adult member of an applicant or foster or adoptive parent's household.

(2) A completed copy of each DPP-157 submitted pursuant to Section 2(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent member of:

(a) An applicant's household; or

(b) A foster or adoptive parent's household.

(3) A completed copy of the DPP-159 and criminal records check conducted pursuant to Section 5 or 7(4) of this administrative regulation shall be maintained for each:

(a) Caretaker relative;

(b) Kinship caregiver; ~~and~~

(c) Fictive kin; and

(d) Adult member of a caretaker relative, fictive kin, or kinship caregiver's household.

(4) A completed copy of the DPP-159 submitted pursuant to Section 5(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent household member of a:

(a) Caretaker relative; ~~or~~

(b) Kinship caregiver; or

(c) Fictive kin.

Section 9. Communications. This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

(1) KRS 620.050(5); or

(2) The terms and conditions of:

(a) A release of information signed by the applicant or foster or adoptive parent; or

(b) The agreement between the cabinet and the child-placing agency.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-157, Background Checks for Applicants or Foster/Adoptive Parents", ~~1/18/17~~[~~edition 10/14~~]; and

(b) "DPP-159, Background Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers", ~~1/18/17~~[~~edition 10/14~~].

(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.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 10, 2017

FILED WITH LRC: October 11, 2017 at 4 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov)

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes background check requirements for caretaker relatives, kinship caregivers, fictive kin, or applicants seeking to provide foster or adoptive services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for background checks of out-of-home or foster care providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of background check requirements for caretaker relatives, kinship caregivers, fictive kin, prospective foster/adoptive parents, and other household members.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of background check requirements for out-of-home or foster care providers.

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

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(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation adds fictive kin to the out-of-home or foster care providers subject to background check requirements in accordance with 2017 Ky. Acts ch. 10. In addition, the amendment changes the criteria for a child abuse and neglect check conducted by the cabinet on a prospective out-of-home or foster care provider by adding a near fatality related to child abuse or neglect. In addition, this amendment clarifies the cabinet's ability to communicate with child-placing agencies and authorizes the cabinet to release information about individuals pending administrative review, which includes being subject to matters still under investigation, assessment, or appeal. The amendment clarifies application of background check requirements on new household members and updates material incorporated by reference, including addressing audit findings from the Federal Bureau of Investigation (FBI). Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement recently enacted legislation establishing fictive kin as a placement option for children removed by the cabinet from their homes of origin. In addition, the amendment is necessary to respond to Red Tape Reduction comments received from child-placing agencies or their representative to improve provision of information and timeliness. Lastly, the amendment is necessary to ensure compliance with FBI requirements for continued access to comprehensive criminal background information and to improve child safety in out-of-home or foster care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its alignment of regulatory provisions with statutory authorities, FBI requirements, requests of impacted private agencies, and additional considerations to improve child safety in out-of-home or foster care.

(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 necessary updates and corrections to background check requirements of caretaker relatives, kinship caregivers, fictive kin, and foster/adoptive parents.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation impacts prospective and existing foster/adoptive parents, relative caregivers, kinship caregivers, and in the near term, fictive kin providers. In addition, child-placing agencies are impacted in their recruitment and approvals of foster/adoptive parents. From January to March 2017, the cabinet processed approximately 6,000 background checks on foster/adoptive parents, caretaker relatives, and kinship caregivers or their household members. As of May 7, 2017, there were 8,375 children in foster care.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new actions on the part of caretaker relatives, kinship caregivers, or foster/adoptive parents. Prior to 2017 Ky. Acts ch. 10, fictive kin were not a placement option. Under this administrative regulation, fictive kin will be added to the placement options utilized by the cabinet upon removal of a child from the child's home of origin and subject to background checks similar to a caretaker relative.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals subject to these background check requirements have their background check costs borne by the cabinet or through a child-placing agency in the course of the agency's business practices. There is no increase in costs resulting from this administrative regulation.

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

entities identified in question (3): As a result of this administrative regulation, children removed from their homes of origin will benefit from an additional placement option, fictive kin, and enhanced safety afforded through the background checks required by this administrative regulation. In addition, the state overall will benefit from continued access to the FBI criminal history records and compliance with federal funding mandates.

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

(a) Initially: There is no new or additional cost projected for the administrative body to implement this administrative regulation. To not effect this administrative regulation would result in threats to the state's child welfare funding.

(b) On a continuing basis: There is no new or additional cost projected for the administrative body 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: Federal Title IV-E (of the Social Security Act), Temporary Assistance for Needy Families Block Grant funds, and State General Funds are the sources of funding 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: 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 directly establish any fees, but rather, enforces the fees that law enforcement or judicial agencies charge to conduct criminal background checks. There is no increase in fees associated with this administrative regulation.

(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. 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

2. State compliance standards. KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional restrictions noted in item 4 of this analysis were added as additional safeguards for children in out-of-home or foster care. The federal law does not prohibit the addition of these 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 Cabinet for Health and Family Services, the Kentucky State Police, and the Administrative Office of the Courts 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), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150, 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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. Fees charged by law enforcement or judicial agencies for criminal background checks cannot exceed the actual costs for conducting the checks.

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

(c) How much will it cost to administer this program for the first year? There are no new or additional costs projected as a result of this regulatory amendment.

(d) How much will it cost to administer this program for subsequent years? There are no new or additional costs projected as a result of this regulatory amendment.

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Protection and Permanency**  
**(Amended After Comments)**

**922 KAR 1:550. Operator's license for children in the custody of the cabinet.**

RELATES TO: KRS 186.450, 186.470, 186.480, 186.590, 199.011(3), (4), (15), 600.020(2), (52), 605.102, 42 U.S.C. 672, 675, 677

STATUTORY AUTHORITY: KRS 194A.050(1), 605.102(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.102 authorizes the cabinet to promulgate an administrative regulation to implement a process utilizing the reasonable and prudent parent standard, in conjunction with the child's caregiver, to: (1) verify that a child in the custody of the cabinet is age or developmentally appropriate to apply for an operator's license, motorcycle operator's license, intermediate license, or instruction permit, and (2) request cancellation of a child's operator's permit or license. This administrative regulation establishes the process for a child in the custody of the cabinet to apply for and obtain an operator's permit or license, **cancellation of an operator's permit or license of a child in the custody of the cabinet, and service complaints.**

Section 1. Definitions. (1) "Age or developmentally appropriate" is defined by KRS 600.020(2).

(2) "Cabinet" is defined by KRS 199.011(3) and 600.020(7).

(3) "Caregiver" is defined by KRS 605.102(1).

(4) "Child" is defined by KRS 199.011(4) and 600.020(9).

(5) "Reasonable and prudent parent standard" is defined by

199.011(15) and 600.020(52).

Section 2. Eligibility determination and application. (1) The cabinet and the child's caregiver shall use the reasonable and prudent parent standard to **verify[determine]** a child's readiness to obtain an operator's license, motorcycle operator's license, intermediate license, or instruction permit.

(2) The cabinet shall form a team to include:

(a) The child;

(b) The child's caregiver or caregiver representative, including the child's foster parent if applicable; and

(c) Another person involved with the child who shall assist the cabinet in **verifying[making a determination]** whether the child is age or developmentally appropriate to obtain an operator's license, motorcycle operator's license, intermediate license, or instruction permit.

(3) The child's team shall discuss the following to ascertain the child's readiness to obtain his or her instruction permit or operator's license:

(a) The child's understanding of the requirements to obtain an instruction permit or operator's license;

(b) The child's roles and responsibilities in meeting the operator's permit or license requirements;

(c) Liability and financial responsibilities;

(d) Ongoing academic requirements;

(e) Age and developmental level in accordance with KRS 605.102;

(f) Placement history and current placement stability;

(g) Previous driving history when applicable; and

(h) Child's history of public charges.

(4) The child shall:

~~(a) Obtain a copy of his or her commitment order from cabinet staff or the court;~~

~~(b) Complete the DPP-17, Readiness for Driving Agreement; and~~

~~(c) authorize the cabinet to request and inspect the child's driving record.~~

(5) If a child's team **verifies[determines]** that a child possesses the requisite skills and understanding of the responsibilities associated with obtaining an operator's permit or license and operating a motor vehicle or motorcycle, the child's team shall allow the child to proceed with the **permit or license** application process.

(6) Prior to a child proceeding to the circuit clerk's office to obtain his or her instruction permit, cabinet staff shall provide verification to the child on cabinet letterhead that the child is in foster care.

(7) Any person who signs an operator's permit or license application for a child shall be responsible in accordance with KRS 186.470 or 186.590.

(8) A child's team shall develop a plan to assist a child in obtaining an operator's permit or license in the future if:

(a) The team **verifies[determines]** that the child is not ready to apply; and

(b) The barrier to obtaining an operator's permit or license is within the ability of the child to correct.

Section 3. Insurance. (1) A child in the custody of the cabinet shall:

(a) Be added to his or her caregiver's insurance policy; or

(b) Apply to obtain **an[a non-owner]** insurance policy with the assistance of the cabinet to the extent that resources are available.

(2) To the extent that funds are available, the cabinet shall:

(a) Fund, in whole or part, **an[a non-owner]** insurance policy for a child; or

(b) Reimburse, in whole or part, a caregiver who has added a foster child to a vehicular insurance policy for the foster child's portion of the premium.

(3) Any person who permits a minor under the age of eighteen (18) to drive his or her vehicle shall comply with KRS 186.590.

(4) A child in the custody of the cabinet shall follow all procedures required by the insurance company during the application process.

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Section 4. Cancellation. (1) Cancellation of an operator's license, motorcycle operator's license, intermediate license, or instruction permit for a child in the custody of the cabinet shall be made in accordance with KRS 186.470 and 605.102.

(2) A person who files the verified written request for cancellation of a child's operator's license, motorcycle operator's license, intermediate license, or instruction permit shall provide notice to the child's cabinet worker or the local office of the Department for Community Based Services charged with the child's case management in accordance with KRS 186.470.

Section 5. Service Complaint. A foster child may file a service complaint in accordance with 922 KAR 1:320. [Incorporation by Reference. (1) "DPP-17, Readiness for Driving Agreement", 7/17, is incorporated by reference.

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

ADRIA JOHNSON, Commissioner  
VICKIE YATES BROWN GLISSON, Secretary  
APPROVED BY AGENCY: October 10, 2017  
FILED WITH LRC: October 11, 2017 at 4 p.m.  
CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, phone (502) 564-6746, fax 502-564-7573, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the process for a child in the custody of the cabinet to apply for and obtain an operator's permit or license.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to implement 2017 Ky. Acts ch.11.
  - (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 allowing children in the custody of the cabinet, who are age or developmentally appropriate, and who meet statutory requirements, to apply for and obtain their operator's license.
  - (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 through its establishment of a process for a child in the custody of the cabinet to apply for and obtain an operator's permit or license in accordance with 2017 Ky. Acts ch. 11.

- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
  - (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
  - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
  - (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect children in foster care who are sixteen (16) and seventeen (17) years of age and wish to obtain an operator's permit or license. There are approximately 1,300 children age sixteen (16) and seventeen (17) years currently in the custody of the cabinet, though a percentage of the children will not seek an operator's permit or license, will not meet statutory requirements regarding school attendance and academic achievement, or will not present

as age or developmentally appropriate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A foster child will be required to undergo consideration by the cabinet and the child's caregiver, the child's team, to determine whether the child is age or developmentally appropriate--measures commensurate with any parent's determination about a child's appropriateness to pursue an operator's permit or license. The foster child will also be required to authorize the cabinet to request and inspect the child's driver's history.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation does not directly impose any new costs on regulated entities. To the extent resources are available, the cabinet will absorb costs for children to obtain an operator's permit or license and insurance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children in foster care will have a higher degree of normalcy as a result of this administrative regulation. Obtaining an operator's permit or license could positively affect the foster children by allowing them to experience the same rites of passage as other children their age and to pursue academia and employment to support a smoother transition into, and greater self-sufficiency in, adulthood.

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

- (a) Initially: Initial implementation costs to the administrating agency will be within existing appropriations.
- (b) On a continuing basis: Ongoing implementation of the administrative regulation by the agency will be within appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E (of the Social Security Act), including Chafee Foster Care Independence Program funds, and State General Funds are used for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

- 1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 672, 675, 677
- 2. State compliance standards. KRS 194A.050(1), 605.102(6)
- 3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 672, 675, 677
- 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, 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, additional or different responsibilities or requirements, than those required by the federal mandate.

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**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

(1) What 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, the Kentucky Transportation Cabinet, and circuit clerks 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), 605.102(6), 42 U.S.C. 672, 675, 677

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 in the form of permit and license fees for youth who had previously been unable to obtain a permit or license prior to age 18.

(b) How 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 may generate revenue in the form of permit and license fees.

(c) How much will it cost to administer this program for the first year? Initial implementation costs to the administering agency will be within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Ongoing implementation of the administrative regulation by the agency will be within appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)

103 KAR 15:050. Filing dates and extensions.

RELATES TO: KRS 131.081(11), 131.170, 136.100, 141.042, 141.160, 141.170, 141.300

STATUTORY AUTHORITY: KRS 131.130(1), 141.042(6), 141.050(4), 141.300(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.081(10), 131.170, 141.042(6), and 141.170 authorize the Department of Revenue~~[Cabinet]~~ to grant a taxpayer an extension of time to file a tax return or to pay an installment of estimated income tax. This administrative regulation establishes the procedures to be used by an individual, a corporation, or a noncorporate entity to obtain an extension of time to file an income or limited liability entity~~[corporation license]~~ tax return or to pay an installment of estimated income tax for a taxable year.

Section 1. Definitions. (1) "Corporation" means a corporation as defined in KRS 141.010(24), an S corporation as defined in KRS 141.010(27)~~[(25)]~~, a limited liability company taxed as a corporation, or other entity taxed as a corporation for Kentucky income tax purposes;

(2) "Date prescribed by KRS 136.100 or 141.160" means the 15th day of the fourth month following the close of the taxable year; and

(3) "Noncorporate entity" means a partnership, a limited liability company treated as a partnership, a trust, a fiduciary, or other entity not taxed as a corporation for Kentucky income tax purposes.

Section 2. An Extension of Time for Filing an Income or Corporation~~[License]~~ Tax Return. (1) Pursuant to KRS 131.081(11) and 141.170, a taxpayer may obtain an extension of time for filing a Kentucky income tax return by means of either a federal extension or a Kentucky extension.

(2) Federal extension.

(a) A taxpayer granted an extension of time for filing a federal income tax return shall be granted the same extension of time for filing a Kentucky income tax return for the same taxable year if a copy of the federal extension approval or request for an automatic extension is attached to the Kentucky income tax return when it is filed.

(b) An extension of time for filing a Kentucky income tax return granted pursuant to this subsection shall be valid for the extension period granted by the Internal Revenue Service.

(c) A copy of the federal extension shall not be mailed to the department~~[Revenue Cabinet]~~ on or before the date prescribed by KRS 141.160, except as provided in Section 3 of this administrative regulation.

(3) Kentucky extension. A taxpayer may file an application for extension with the department~~[Revenue Cabinet]~~, on or before the date prescribed by KRS 141.160 for filing the return.

(a) An individual or a noncorporate entity shall file an "Application for Extension of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky", Revenue Form 40A102.

1. An individual or a noncorporate entity shall state the reason for the request on the application for extension. Inability to pay the tax liability shall not be a valid reason.

2. An individual or a noncorporate entity shall be notified by mail if the application for extension is denied. A copy of an approved application for extension shall not be returned to the individual or noncorporate entity.

3. An individual or a noncorporate entity shall be granted an extension of time to file for six (6) months unless the application for extension is denied.

4. An individual outside the United States shall be granted an extension of time to file for twelve (12) months unless the

application for extension is denied.

5. A copy of the signed and dated application for extension shall be attached to the income tax return when it is filed.

(b) A corporation shall file an "~~[Application for Six-month]Extension of Time to File Kentucky Corporation/LLET~~~~[Income and License Tax]~~ Return", Revenue Form 41A720SL.

1. A corporation shall be granted an extension of time to file for six (6) months.

2. A copy of an approved application for extension shall not be returned to the corporation.

3. The extension shall become valid when mailed to the department~~[Revenue Cabinet]~~ on or before the date prescribed by KRS 141.160 for filing the return.

4. The corporation shall attach a copy of the signed and dated application for extension to its "Kentucky Corporation Income Tax And LLET ~~[And License Tax]~~ Return", Revenue Form 71A720~~[720]~~, when it is filed.

(4) An extension of time for filing a consolidated Kentucky corporation income tax return shall constitute an extension of time for filing for each member of the affiliated group.

(5) An extension of time for filing a corporation income tax return shall constitute an extension of time for filing a limited liability entity~~[corporation license]~~ tax return for the same taxable year.

Section 3. Payment of Tax. (1) An extension of time to file an income or limited liability entity~~[corporation license]~~ tax return shall not constitute an extension of time to pay the tax.

(2) A taxpayer shall determine if an amount of tax remains unpaid on or before the date prescribed by KRS 136.100 or 141.160 for filing the return.

(3) If tax remains unpaid, a check for the amount of the unpaid tax shall be submitted to the department~~[Revenue Cabinet]~~ on or before the date prescribed by KRS 136.100 or 141.160 for filing the return along with the Kentucky extension or a copy of the federal extension.

(4) A corporation shall write its Kentucky Account Number in the upper right hand corner of the federal extension submitted.

(5) An affiliated group filing a mandatory nexus consolidated income tax return and making a payment of tax with the application for extension shall file a Kentucky extension to ensure the proper processing of payments.

Section 4. Interest and Penalties. (1) Statutory interest shall be paid from the date prescribed by KRS 136.100 or 141.160 for filing the return until the tax is paid.

(2) If the envelope bearing the return is postmarked on or before the filing date, a late filing penalty shall not apply.

Section 5. Extension of Time to Pay Estimated Income Tax. (1) A request for an extension of time to pay an installment of estimated tax prescribed by KRS 141.042 and 141.300 shall be submitted to the Department of Revenue~~[Cabinet]~~, Frankfort, Kentucky 40620.

(2) The request shall state a basis for the extension.

(3) An extension of time to pay an installment of estimated tax shall be granted for thirty (30) days under exceptional circumstances.

(4) Interest shall be paid from the due date of the installment of estimated tax until the tax is paid.

Section 6. The forms and materials listed herein~~[Incorporation by Reference. (1) The following forms are incorporated by reference:~~

~~(a) "Application for Extension of Time to File Individual, Partnership and Fiduciary Income Tax Returns for Kentucky", Revenue Form 40A102, (9-97); and~~

~~(b) "Application for Six-month Extension of Time to File Kentucky Corporation Income and License Tax Return", Revenue Form 41A720SL, (9-97).~~

(2) These forms] may be obtained or inspected, subject to

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applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, [Revenue Cabinet, 200 Fair Oaks Lane,] Frankfort, Kentucky 40601[40620], on the department website at <http://revenue.ky.gov>, or at a Kentucky Department of Revenue [Cabinet] Taxpayer Service Center during hours of operation.[-, Monday through Friday, 8 a.m. to 4:30 p.m.-]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, Department of Revenue, 501 High Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Amends KRS 15:050 to remove outdated language no longer applicable.

(b) The necessity of this administrative regulation: To provide the most accurate and up to date information for Kentucky taxpayers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By ensuring that statutory revisions are incorporated into affected regulations and passed down to those affected by the change.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Correcting outdated or incorrect language in regulations help to decrease call volume to the department and confusion regarding the deficient information.

(2) If 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 replaces incorrect references to the Kentucky Revenue "cabinet" with "department" under the authority of KRS 131.020 that reorganized the Kentucky Revenue Cabinet into the Department of Revenue in 2005; and removed references to forms "incorporated by reference" that are no longer incorporated in a forms regulation and are now only prescribed on the department website.

(b) The necessity of the amendment to this administrative regulation: The current regulation as written is outdated and deficient. This amendment will bring the regulation in line with the most up to date authorizing statutory language.

(c) How the amendment conforms to the content of the authorizing statutes: It replaces outdated language or references that have been replaced by statutory revisions.

(d) How the amendment will assist in the effective administration of the statutes: By decreasing call volume to the department and confusion regarding the deficient information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone wishing to know the departments

policy for granting an extension of time to file a tax return or pay an installment of tax due.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no required actions.

(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 required to comply with this change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be less confusion and work by following the correct process to obtain an extension of time to file or pay an installment of tax due.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no additional cost to the department by filing this update.

(a) Initially: No additional costs outside current department funding will be used.

(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 departmental budgetary funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All taxpayers wishing to file a claim for refund with the department will all be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.081, 131.130, 131.170, 141.042, 141.050 and 141.300.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET  
 Department of Revenue  
 (Amendment)

**103 KAR 16:240. Nexus standard for corporations and pass-through entities[general partnerships].**

RELATES TO: KRS 141.010, 141.040, 141.206.

STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.040(1) requires non-exempt corporations doing business in Kentucky to pay corporation income tax and file the required tax forms for that tax. KRS 141.206 requires pass-through entities[general partnerships] doing business in Kentucky to file tax forms to compute the distribution of income to the partners, members or shareholders[general partners]. KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky's tax laws. KRS 141.018 requires the Department of Revenue to promulgate administrative regulations necessary to implement 2005 Ky. Acts ch. 168. KRS 141.010(25) defines "doing business in this state". This administrative regulation establishes what constitutes nexus in Kentucky under a doing business standard and provides examples.

Section 1. Definitions. (1) "Business situs" means in relation to intangible personal property:

(a) The corporation's or pass-through entity's[general partnership's] commercial domicile;

(b) The place where the intangible personal property is utilized by the corporation or pass-through entity[general partnership]; or

(c) The state where the intangible personal property is located if possession and control of the intangible personal property is localized in connection with a trade or business so that substantial use or value attaches to the property.

(2) "Commercial domicile" means the principal place from which the trade or business of the corporation or pass-through entity[general partnership] is managed.

(3) "Corporation" is defined by KRS 141.010(24).

(4) "Doing business in this state" is defined by KRS 141.010(25).

(5) "Foreign corporation" means a corporation incorporated or formed under the authority of another state or country.

(6) "Foreign pass-through entity[general partnership]" means a pass-through entity[general partnerships] organized under the laws of another state or country.

(7) "Pass-through entity[General partnerships]" is defined by KRS 141.010(26)[141.206(1)(a)].

(8) "Owning or leasing property in this state" means owning or leasing real or tangible personal property in Kentucky, including:

(a) Maintaining an office or other place of business in Kentucky;

(b) Maintaining in Kentucky an inventory of merchandise or material for sale, distribution or manufacture, or consigned goods, regardless of whether kept on the taxpayer's premises, in a public or rented warehouse, or otherwise; or

(c) Owning computer software used in the business of a third party within Kentucky.

(9) "Qualified real estate investment trust subsidiary" is defined by Section 856(i)(2) of the Internal Revenue Code, 26 U.S.C. 856(i)(2).

(10) "Qualified subchapter S subsidiary" is defined by Section 1361(b)(3)(B) of the Internal Revenue Code, 26 U.S.C. 1361(b)(3)(B).

(11) "Related corporation" means a corporation in which another corporation or pass-through entity[general partnership] maintains an ownership interest of fifty (50) percent or more during any portion of the taxable year.

(12) "Single member limited liability company" means a limited liability company with one (1) member.

Section 2. In General; Rules of Construction. (1) For purposes

of the corporation income tax imposed by KRS 141.040(1) and the filing requirement imposed on pass-through entities[general partnerships] by KRS 141.206(2), the term "doing business in this state" or "doing business" shall be used in a comprehensive sense concerning the operation of any profit-seeking enterprise or activity in Kentucky.

(2) In determining if a corporation or pass-through entity[general partnership] is doing business in Kentucky, it shall be immaterial whether the activities actually result in a profit or loss.

(3) Whether a corporation or pass-through entity[general partnership] is doing business in Kentucky shall be determined by the facts in each case.

(4) Whether the activities of a foreign corporation or pass-through entity[general partnership] fall within the scope of "solicitation" within the meaning of Pub.L. 86-272, codified as 15 U.S.C. 381 to 384, shall be a factual determination. The examples in Sections 3 and 4 of this administrative regulation shall be used as guidelines. In applying the guidelines to the particular circumstances and activities of a foreign corporation or pass-through entity[general partnership], the Department of Revenue shall employ the following rules of construction:

(a) The effect of the activities listed in Sections 3 and 4 of this administrative regulation shall be cumulative. In determining whether a taxpayer is doing business in Kentucky, all of these activities shall be considered as a whole.

(b) If the Department of Revenue determines that a taxpayer is doing business in Kentucky, the taxpayer shall carry the burden of substantiating any claim that these activities in Kentucky do not constitute doing business under either Pub.L. 86-272, codified as 15 U.S.C. 381 to 384, or the United States Constitution.

(c) Documentary evidence shall be given substantial weight in establishing the nature and extent of the taxpayer's activities. Affidavits or other evidence not contemporaneous with the events in question shall be given little weight.

(d) The term "solicitation" shall include only actual requests for purchases and activities that are entirely ancillary to requests for purchases. An activity shall be considered entirely ancillary to the requesting of purchases if it serves no independent business purpose apart from its connection to the soliciting of orders.

(e) Activities conducted by a foreign corporation or pass-through entity[general partnership] with respect to a particular order shall not constitute "solicitation" if the activity occurs after the order has been placed.

Section 3. Exception for Solicitation Activities Protected by Pub.L. 86-272, codified as 15 U.S.C. 381 to 384. (1) General; preemption of state law. This administrative regulation adopts a narrow interpretation of the immunity afforded by Pub.L. 86-272, codified as 15 U.S.C. 381 to 384, which precludes the imposition of Kentucky income tax upon a foreign corporation, or the filing requirement imposed on foreign pass-through entity[general partnerships], if the corporation's or pass-through entity's[general partnership's] sole activity in Kentucky is the corporation's or pass-through entity's[general partnership's] representatives soliciting orders for the sale of tangible personal property in the name of the corporation or pass-through entity[general partnership] or in the name of a prospective customer if the orders are:

(a) Sent outside of Kentucky for approval or rejection; and  
 (b) Filled by shipment or delivery from a point outside of Kentucky.

(2) Scope of Pub.L. 86-272, codified as 15 U.S.C. 381 to 384.

(a) If a corporation or pass-through entity[general partnership] engages both in protected solicitation activities and in any other activity that is not a protected solicitation activity, it shall not claim the immunity granted by Pub.L. 86-272, codified as 15 U.S.C. 381 to 384.

(b) Solicitation of orders shall not be protected by Pub.L. 86-272, codified as 15 U.S.C. 381 to 384, if the solicitation is for the:

1. Sale or provision of services; or
2. Sale, lease, rental, license or other disposition of real property or intangibles.

(3) Activities normally considered to be solicitation. The activities listed in this subsection shall serve as examples of



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activities that ordinarily fall within the scope of "solicitation" under Pub.L. 86-272, codified as 15 U.S.C. 381 to 384:

- (a) Soliciting orders through advertising;
  - (b) Carrying samples and promotional materials only for display or distribution without charge or other consideration;
  - (c) Soliciting orders by an in-state resident employee or representative of the company, if that person does not maintain or use any office or other place of business in the state other than an "in-home" office as described in subsection (4) of this section;
  - (d) Furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;
  - (e) Checking customer inventories for reorder without a charge therefore, but not for other purposes such as quality control;
  - (f) Recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;
  - (g) Conducting solicitation activities from an employee's in-home work space, if the use of the space is not paid for by the company;
  - (h) Performing missionary sales activities, including the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if the solicitation activities are otherwise immune;
  - (i) Coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;
  - (j) Maintaining a sample or display area for an aggregate of fourteen (14) calendar days or less at any one (1) location within Kentucky during the tax year, if no other activities inconsistent with solicitation take place;
  - (k) Mediating direct customer complaints if the purposes are solely to ingratiate sales personnel with the customer and facilitate requests for orders;
  - (l) Passing orders, inquiries and complaints on to the home office;
  - (m) Providing automobiles to sales personnel for use solely in solicitation activities; and
  - (n) Owning, leasing, using or maintaining personal property for use in the employee or representative's "in-home" office or automobile that is solely limited to the conducting of solicitation activities. The use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer or computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to solicitation or permitted by this Section shall not, by itself, remove the protection.
- (4) Activities that are not solicitation. The activities listed in this subsection shall serve as examples of activities in this state that fall outside the scope of "solicitation" and are not protected by Pub.L. 86-272, codified as 15 U.S.C. 381 to 384 unless the activity is de minimis within the meaning of Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447 (1992):
- (a) Making repairs or providing maintenance or service to the property sold or to be sold;
  - (b) Installing or supervising installation at or after shipment or delivery;
  - (c) Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;
  - (d) Investigating credit;
  - (e) Repossessing property;
  - (f) Conducting training courses, seminars or lectures for personnel other than personnel involved only in solicitation;
  - (g) Investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints if the sole purpose of the mediation is to ingratiate the sales personnel with the customer;
  - (h) Approving or accepting orders;
  - (i) Securing deposits on sales;
  - (j) Picking up or replacing damaged or returned property, including stale or unsaleable property;
  - (k) Maintaining a sample or display area for an aggregate of

fifteen (15) days or more at any one location within Kentucky during the tax year;

- (l) Providing technical assistance or service, including engineering assistance or design service, if one (1) of the purposes of it is other than the facilitation of the solicitation of orders;
- (m) Hiring, training or supervising personnel for other than solicitation activities;
- (n) Using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;
- (o) Carrying samples for sale, exchange or distribution in any manner for consideration or other value;
- (p) Providing shipping information and coordinating deliveries;
- (q) Supervising the operations of a franchisee or similar party;
- (r) Monitoring, inspecting, or approving work performed by an independent contractor under a warranty or similar contractual arrangement;
- (s) Consigning stock of goods or other tangible personal property for sale to any person, including an independent contractor;
- (t) Fulfilling sales orders by shipment or delivery from a point within Kentucky;
- (u) Owning, leasing, maintaining or otherwise using as part of the business operations in Kentucky any of the following facilities or property:
  - 1. Repair shop;
  - 2. Parts department;
  - 3. Warehouse;
  - 4. Meeting place for directors, officers, or employees;
  - 5. Stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation; or
  - 6. Telephone answering service that is publicly attributed to the company or to an employee or agent of the company in their representative status;
- (v) Maintaining, by any employee or other representative, an office or place of business of any kind other than an in-home office. For the purpose of this subsection it shall not be relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office. An office shall be considered in-home if it is located within the residence of the employee or representative, and:
  - 1. Is not publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity. Factors considered in determining if an office is publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity shall include:
    - a. A telephone listing or other public listing within the state for the company, or for an employee or representative of the company in that capacity, or other indications through advertising or business literature that the company or its employee or representative can be contacted at a specific address within the state;
    - b. The normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone and fax numbers, and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative; or
    - c. The maintenance of any office or other place of business in this state that does not strictly qualify as an "in-home" office as described in this paragraph shall, by itself, cause the loss of protection under this subsection;
  - 2. The use of the office is limited to: soliciting and receiving orders from customers; for transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Pub.L. 86-272, codified as 15 U.S.C.A. 381 to 384 or under this administrative regulation;
  - (w) Entering into franchising or licensing agreements, selling or otherwise disposing of franchises and licenses, or selling or otherwise transferring tangible personal property pursuant to the franchise or license by the franchisor or licensor to its franchisee or licensee within the state; or

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(x) Conducting any other activity which is not entirely ancillary to the solicitation of orders, even if the activity helps to increase purchases.

Section 4. "Doing Business". An analysis to determine if a corporation or pass-through entity[~~general partnership~~]'s activities fall within the provisions of KRS 141.010(25) shall include the factors established in this section. (1) The activities listed in this subsection shall serve as examples of "doing business" under KRS 141.010(25)(f):

(a) Performing services in Kentucky, whether directly by the corporation or pass-through entity[~~general partnership~~] or indirectly by directing activity performed by a third party;

(b) Accepting orders in Kentucky;

(c) Operating a professional sports team which engages in professional sports activities in Kentucky;

(d) Owning an interest in mineral rights in Kentucky, including interests in coal, oil, or natural gas;

(e) Leasing motion picture films to movie theaters and television stations in Kentucky;

(f) Being the member of a single member limited liability company that is doing business in Kentucky and is disregarded for federal income tax purposes;

(g) Being a partner in a pass-through entity[~~general partnership~~] doing business in Kentucky; or

(h) Receiving income from intangible personal property if the intangible personal property has acquired a Kentucky business situs.

(2) The activities listed in this subsection shall serve as examples of "doing business" under KRS 141.010(25)(g):

(a) Performing or soliciting orders for services in Kentucky, including those services performed in Kentucky by a third party on behalf of a corporation or pass-through entity[~~general partnership~~];

(b) Selling or soliciting orders for real property;

(c) Selling or soliciting orders for intangible personal property;

(d) Selling tangible personal property; or

(e) Delivering merchandise inventory on consignment to its Kentucky distributors or dealers.

(3) A corporation or pass-through entity[~~general partnership~~] may be considered doing business under KRS 141.010(25)(d) without having employees in Kentucky. If activities are performed in Kentucky by a third party on behalf of the corporation or pass-through entity[~~general partnership~~], the corporation or pass-through entity[~~general partnership~~] shall be considered doing business in Kentucky.

(4)(a) General.

1. The activities in this paragraph shall not, in themselves, subject a corporation to Kentucky corporation income tax or a pass-through entity[~~general partnership~~] to a Kentucky filing requirement.

2. These exempted activities shall not relieve a corporation from Kentucky corporation income tax if the corporation is otherwise subject to Kentucky corporation income tax and shall not relieve a pass-through entity[~~general partnership~~] from a Kentucky income tax filing requirement if the pass-through entity[~~general partnership~~] is otherwise required to file a Kentucky return.

3. Mere ownership of a corporation that is doing business in Kentucky shall not subject the owner to the requirements. However, based on additional facts and circumstances, sufficient contacts with Kentucky may exist to establish that the corporation or pass-through entity[~~general partnership~~] is doing business in Kentucky. The activities listed in this subparagraph shall serve as examples of facts and circumstances that establish that the corporation or pass-through entity[~~general partnership~~] is doing business in Kentucky:

a. Being the parent corporation of a qualified real estate investment trust subsidiary that is doing business in Kentucky;

b. Being the parent corporation of a qualified subchapter s subsidiary that is doing business in Kentucky;

c. Being the member of a single member limited liability company that is doing business in Kentucky and is disregarded for federal income tax purposes;

d. Being a related corporation doing business in Kentucky

which is performing activities as the corporation's or pass-through entity[~~general partnership~~]'s agent in Kentucky;

e. Receiving income from a contract between a corporation or pass-through entity[~~general partnership~~] and a related corporation doing business in Kentucky if the income is derived from the related corporation's activities in Kentucky;

f. Being a corporation that is essentially a shell corporation, or other facts indicate that an independent corporate existence is essentially disregarded; or

g. Entering into franchising or licensing agreements and receiving income from franchising or licensing agreements that have acquired a Kentucky business situs.

(b) Employee or independent agent activity. A foreign corporation or pass-through entity[~~general partnership~~] that is not otherwise doing business in Kentucky may be considered to not be doing business in Kentucky, even if its employees or independent agents are performing certain de minimis activities in Kentucky. The following items shall serve as examples of de minimis activities:

1. A foreign corporation or pass-through entity[~~general partnership~~] sending various employees, e.g., legal staff and witnesses, to assist its independent legal counsel in defending a lawsuit in Kentucky. The law firm providing counsel shall be taxable in Kentucky;

2. A foreign corporation or pass-through entity[~~general partnership~~] sending its employees to Kentucky to purchase raw materials and inventory;

3. A foreign corporation or pass-through entity[~~general partnership~~] giving its highest performing sales person an expense paid vacation to Lake Barkley, Kentucky; or

4. A foreign corporation or pass-through entity[~~general partnership~~] sending its business records to Kentucky for use by its independent auditors.

Section 5. This administrative regulation shall apply to taxable years beginning on or after January 1, 2005.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation updates the terminology of the regulation to match KRS 141.206. In tax years 2005 & 2006 ordinary pass-through entities (s-corporations, and LLCs) were taxed at the entity level as though they were corporations, therefore for those years the only pass-through entity that Kentucky recognized for tax purposes was a general partnership. However, after tax

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modernization, ordinary pass-through entities (s-corporations, and LLCs) were once again taxed as pass-through entities. The language in 103 KAR 16:240 was never updated after the definition of a pass-through entity was changed in KRS 141.206 in 2006, and as such continues to refer to nexus standards for "general partnerships," but should actually state "pass-through entity".

(b) The necessity of this administrative regulation: The term "general partnership" as it is currently used in 103 KAR 16:240 was only effective for tax years 2005-2006. The definition was changed in KRS 141.206 in 2006 during tax modernization. The term "pass-through entity" is the correct term to use for tax years 2007 forward.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by updating the outdated language to the correct definition for tax years 2007 forward.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will update the language/terminology to be consistent with the authorizing statute, KRS 141.206.

(2) If 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 updates the out-of-date language of "general partnership" to "pass-through entity"; and "general partners" to "partners, members or shareholders" which was never changed after the definition of a pass-through entity was changed in KRS 141.206 in 2006.

(b) The necessity of the amendment to this administrative regulation: It is needed to update incorrect use of out-of-date terminology and corrects them to be consistent with the authorizing statute, KRS 141.206.

(c) How the amendment conforms to the content of the authorizing statutes: It will update the language/terminology to be consistent with the authorizing statute, KRS 141.206.

(d) How the amendment will assist in the effective administration of the statutes: It will reduce confusion by eliminating use of incorrect terms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 62,000 S-corporations, 48,000 multi-member LLCs, and 33,000 single member LLCs that would benefit from a correction of the terminology in the regulation to be in-line with the statute.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost to any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Less confusion once the regulation language is consistent with the statutory language.

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

(a) Initially: Current budget funding and staff will implement this amendment.

(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 departmental staff and 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: No fees were established with this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied. All taxpayers required to file forms regarding the taxes affected by this regulation will all be 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? No government offices will be impacted. The department has already adjusted forms and instructions for this change back in 2006.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 141.206 & KRS 141.010

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? 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:

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)

~~103 KAR 16:360. Deductibility of the [New York Franchise Tax on Business Corporations, the] Massachusetts Corporate Excise Tax[,] and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.~~

RELATES TO: KRS 141.010, 141.040

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.010(13)(d)1 prohibits any deduction for a state tax which is computed in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof[141.010(13)(a)] prohibits a deduction from gross income for state taxes computed, in whole or in part, by reference to gross or net income. This administrative regulation establishes the requirements for the deductibility of the portion of the ~~[New York Franchise Tax on Business Corporations computed on the subsidiary capital base, the] Massachusetts Corporation Excise Tax and West Virginia Business and Occupations Tax.~~

Section 1.~~[The portion of the New York Franchise Tax on Business Corporations computed on the subsidiary capital base under New York Tax Law Section 210, Subdivision 1(e), shall be deductible in computing Kentucky net income.~~

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~~Section 2.]~~ The Massachusetts Corporation Excise Tax imposed by Massachusetts General Law Chapter 63, Sections 32 and 39 shall be deductible, or not deductible, as follows:

- (1) Any amount of the tax paid that is based on tangible property shall be deductible.
- (2) Any amount of the tax paid that is based on net worth shall be deductible.
- (3) Any amount of the tax paid that is based on gross or net income shall not be deductible.

Section 2[3]. The West Virginia Business and Occupation Tax imposed by West Virginia Code 11-13-2 on utilities shall be deductible, or not deductible, as follows:

- (1) Any amount of tax paid by electric power producers based upon average taxable generating capacity shall be deductible.
- (2) Any amount of tax paid by electric power distributors based on kilowatt hour shall be deductible.
- (3) Any amount of tax paid by a natural gas storage business based on the amount of gas in the storage facility or the average monthly tax paid for a five-year period shall be deductible.
- (4) Any amount of tax paid by a manufacturer or producer of synthetic fuels that is based on the weight of the fuel manufactured or produced shall be deductible.
- (5) Any amount of tax paid by a public service company or utility business that is based on gross or net income shall not be deductible.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation removes regulatory language related to the portion of the New York Franchise Tax on Business Corporations that was computed on the subsidiary capital base under New York Tax Law Section 210, Subdivision 1(e), which was repealed in 2014.
  - (b) The necessity of this administrative regulation: To provide Kentucky taxpayers with the most up to date information possible regarding tax administration.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: It removes repealed language to be consistent with current language.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of 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 only removes language that has been repealed pursuant to the 2014 New York State corporate tax reform under 2014 Chapter 59-Part A.

(b) The necessity of the amendment to this administrative regulation: It is necessary to remove repealed language to avoid confusion with the taxpayer and provide the most up to date information possible.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates the regulation to be in compliance with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: By providing corrected language, there will be less confusion among taxpayers when filing their taxes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Businesses subject to the Massachusetts Corporate Excise Tax and West Virginia Business and Occupations Tax will continue to be affected by this regulation. This administrative regulation only removes regulatory language related to the portion of the New York Franchise Tax Law Section 210, Subdivision 1(e), which was repealed in 2014 effective for taxable years on or after January 1, 2015. The number of businesses affected is undeterminable as this number could change frequently.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will now only govern the deductibility of the Massachusetts Corporate Excise Tax and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clear and updated information when referencing this administrative regulation for guidance.

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

(a) Initially: No additional costs are expected.

(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 departmental budgetary funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All taxpayers required to file forms regarding the taxes affected by this regulation will all be treated the same.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Under 2014 Chapter 59-Part A, the New York State legislature repealed the portion of the New York Franchise Tax on business corporations that was computed on the subsidiary capital base for tax years beginning on or after January 1, 2015.

3. Estimate the effect of this administrative regulation on the

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expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no impact on the expenditures or revenues of a state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)

103 KAR 18:070. Supplemental wages and other payments subject to withholding.

RELATES TO: KRS 141.010(22), 141.020, 141.310, 141.315, 341.020, 341.090, 341.395, 26 U.S.C. 3402(q)

STATUTORY AUTHORITY: KRS 141.050(4), 141.310(8), 141.315

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary for the proper administration of any and all provisions of KRS Chapter 141. KRS 141.310(8) authorizes the department to promulgate an administrative regulation for withholding in addition to those provided in KRS 141.310 and 141.315 if the employer and employee agree to additional withholding. KRS 141.315 requires the department to promulgate administrative regulations governing certain specified types of payments. This administrative regulation prescribes procedures for withholding income tax on gambling winnings, supplemental wages, vacation pay, and unemployment benefits.

Section 1. Definitions. (1) "Benefit year" is defined by KRS 341.090(3).

(2) "Benefits" is defined by KRS 341.020(4).

(3) "Cabinet" means the Education and Workforce Development Cabinet as defined by KRS 341.005.

(4) "Department" means the Department of Revenue as [is] defined by KRS 141.010(2).

(5) "Fund" is defined by KRS 341.020(1).

(6) "Gambling winnings" means winnings that are subject to withholding as defined by 26 U.S.C. 3402(q) of the Internal Revenue Code. (7) "Supplemental wages" means payments made to an employee by the individual's employer in addition to regular wages.

Section 2. Gambling Winnings. Every person making a payment of gambling winnings shall deduct and withhold from the payment Kentucky income tax at the maximum tax rate provided in KRS 141.020.

Section 3. Supplemental Wages. (1) If supplemental wages are paid at the same time as regular wages, the tax to be withheld

shall be determined as if the aggregate of the supplemental and regular wages were a single wage payment for the regular payroll period.

(2) If supplemental wages are paid at a different time, the employer shall determine the tax to be withheld by aggregating the supplemental wages either with the regular wages for the current payroll period or with the regular wages for the last preceding payroll period within the same calendar year.

Section 4. Vacation Pay. (1) If an employee receives vacation pay for the time of a vacation absence, the vacation pay shall be subject to withholding as though it were a regular wage payment made for the payroll period or periods which occur during the vacation.

(2) If vacation pay is paid in addition to regular wages to an employee who forgoes his vacation, the payments shall be treated as supplemental wages.

Section 5. Unemployment Benefits. (1) An individual filing a new claim for benefits shall:

(a) Be notified of the requirements established in KRS 341.395(1) by the Education and Workforce Development Cabinet; and

(b) Indicate on the initial or reopened claim for benefits [Initial Claim Application, Form 401, incorporated by reference in 787 KAR 1:090,] if the individual elects to have the state income tax imposed by KRS 141.020 deducted and withheld from the individual's benefits at the rate of four (4) percent. An individual may make the indication:

1. On paper by completing an "Initial Claim Application" as incorporated by reference in 787 KAR 1:090;

2. Electronically by submitting an Initial Claim Application online at <https://uiclaims.des.ky.gov/ebenefit>; or

3. By any other means of filing an initial claim application as established by the cabinet and 787 KAR 1:090(2).

(2) The amounts deducted and withheld from benefits pursuant to subsection (1) of this section shall remain in the unemployment insurance fund until transferred to the department as a payment of income tax in accordance with the priority order established in 787 KAR 1:320.

(3) The cabinet shall follow all procedures pertaining to the deducting and withholding of income tax specified in KRS 341.395(3) or by the department.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, Department of Revenue, 501 High Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation updates 103 KAR 18:070 to clarify department filing requirements for an individual filing a claim for unemployment benefits and wishing to designate 4% be withheld for Kentucky income tax.

(b) The necessity of this administrative regulation: This amendment is necessary to update outdated language so taxpayers can more easily understand the requirements of the department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It clarifies all sources of filing that an individual may use to indicate their preference for having income tax withheld from their unemployment benefits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These changes will add additional methods of filing a claim for unemployment benefits and indicating the preference to withhold, or not to withhold income tax.

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

(a) How the amendment will change this existing administrative regulation: See 1(d).

(b) The necessity of the amendment to this administrative regulation: To update outdated language to provide additional information to a taxpayer and avenues for filing an "Initial Claim Application, Form 401" provided by the Education and Workforce Development Cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: It provides the most up to date information possible to assist the taxpayers of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide information that may better assist those individuals who look to this regulation for guidance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any individual or employer needing guidance on types of income or other payments subject to withholding.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are required by any individual or entity to comply with this 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 to obtain the new information.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional information will provide additional avenues for filing by an individual or entity looking for ways to file a claim for unemployment benefits, or report wages, payments, etc.

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

(a) Initially: No additional costs are expected. Current staff and funding will implement this amendment.

(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 departmental budgetary funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All persons or entities affected by this regulation will be treated the

same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 141.050, 141.310 and 141.315.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amendment to this regulation affects employers and individuals needing information on wages and other payments subject to Kentucky income tax withholding.

(a) How much 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. It only adds additional information, such as a website address, to assist taxpayers when filing a claim for unemployment compensation to designate 4% of the amount to be withheld for Kentucky income tax.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)

103 KAR 26:120. Advertising agencies.

RELATES TO: KRS ~~139.010, [139.050, 139.100, 139.110, 139.120, 139.140,]~~ 139.200, 139.260, 139.270, 139.280, 139.310, 139.330

STATUTORY AUTHORITY: KRS 131.130, 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 and 139.710 authorize the Department of Revenue[Revenue Cabinet] to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of the Kentucky tax laws. This administrative regulation establishes requirements and guidelines for the application of sales and use tax to purchases and sales of tangible personal property and digital property by advertising agencies.

Section 1. Definitions. (1) "Advertising agency" means a business engaged primarily in the professional service of developing strategy, concept, and design for the placement of advertising on radio or television stations, or in newspapers, magazines, or other media.

(2) "Advertising services" means all advertising agency activities involved in the conceptualization, development, production, and refinement of a master advertisement prior to its reproduction by the advertising agency or a third party including

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creative concept development, design, layout, consultation services, research, script and copy writing, art preparation, public relations, and account management services.

(3) "Master advertisement" means the original advertising material created by the advertising agency for reproduction as tangible personal property or digital property~~[in tangible form]~~ for the purpose of display or other advertising uses, such as master commercials, camera ready art, proofs, and corporate logos.

Section 2. Advertising Agencies as Consumers in Creation of Master Advertisement. (1) An advertising agency shall be the consumer of all the tangible personal property and digital property used in the performance of its advertising services to produce a master advertisement regardless of whether the property the agency purchases is acquired in the name or account of the advertising agency or its client. The tax shall apply to the advertising agency's purchase of:

(a) All tangible personal property or digital property for use in the performance of its advertising services, including the purchase or rental of stock photos and movie footage delivered as tangible personal property or digital property;

(b) Any materials that become a component of the master advertisement; and

(c) Any tangible personal property or digital property that is incidentally provided to the client as part of the advertising services.

(2) An advertising agency shall not claim that its purchase of tangible personal property or digital property is exempt from sales and use tax because the property is to be used in fulfilling a contract with:

(a) The federal government, state government, or political subdivision thereof;

(b) Any department, agency, or instrumentality of the federal government, state government or political subdivision thereof; or

(c) A religious, educational, or charitable institution exempt from tax under KRS 139.495.

(3) The performance of advertising services shall not constitute manufacturing or processing production of tangible personal property for sale. Therefore, an advertising agency shall not claim that its purchase of tangible personal property used in the performance of its advertising services is exempt from sales and use tax under the:

(a) Raw material, industrial tool, and industrial supply exemption as provided in KRS ~~139.470(10)~~139.470(14); or

(b) The machinery for new and expanded industry exemption as provided in KRS 139.480(10).

(4) If acting in the capacity of a consumer, an advertising agency shall not bill its client for tax on charges made for advertising services.

Section 3. Advertising Agencies as Retailers After Creation of Master Advertisement. (1) An advertising agency shall be a retailer of tangible personal property and digital property the advertising agency sells to its clients or to others on behalf of its clients regardless of whether the sale is at a marked-up price. This provision shall include property reproduced from a master advertisement whether the advertising agency or a third party actually reproduces the materials. This provision shall not include property described in Section 2 of this administrative regulation that the advertising agency uses in creating a master advertisement.

(2) An advertising agency engaged in business as a retailer shall:

(a) Complete a "Kentucky Tax Registration Application",~~[(October 2002)]~~ Revenue Form 10A100, to register with the Department of Revenue~~[Revenue Cabinet]~~ for a retail sales and use tax permit; and

(b) Report and pay the applicable tax derived from gross receipts utilizing Revenue Form 51A102, "Sales and Use Tax Return",~~[(July 2003)]~~.

(3) Taxable receipts from an advertising agency's retail sale of tangible personal property and digital property shall include all charges for services that are a part of the sale of tangible personal property and digital property including charges for:

(a) Inbound freight;

(b) Production supervision; or

(c) Print management that directly relate to the sale of particular tangible personal property.

(4) Gross receipts subject to sales tax shall not include periodic print management fees or other retainer fees not related to the sale of particular tangible property and paid whether or not there is a transfer of tangible property in a given fee period.

(5) An advertising agency may purchase tangible personal property and digital property it sells to or for its clients as a sale for resale without payment of the tax if the advertising agency provides to its suppliers a properly completed:

(a) Kentucky "Resale Certificate"~~[(September 1990)]~~, (Revenue Form 51A105);

(b) Multistate Tax Commission (Uniform Sales and Use Tax Certificate Multijurisdiction);~~[or]~~

(c) Streamlined Sales and Use Tax Agreement – Certificate of Exemption (Revenue Form 51A260); or

(d)[(e)] Other documentation containing the information required by KRS 139.280.

Section 4. Joint Activities by Advertising Agencies. (1) If an advertising agency contracts with a client to provide both advertising services and the sale of tangible personal property or digital property, receipts subject to tax shall be determined by the following guidelines provided the charges for the advertising services are clearly delineated from the charges for the tangible personal property or digital property on the customer's invoice.

(a) Any transfer of tangible personal property or digital property for a consideration, other than the master advertisement and the items described in Section 2 of this administrative regulation used in the creation of the master advertisement, to a client or a third party on behalf of a client shall be considered a retail sale of tangible personal property or digital property subject to sales tax.

(b) Receipts from agency fees, service charges, or commissions exclusively for advertising services shall not be subject to sales tax, including charges for placing advertisements in print, broadcast, or other media.

(c) The amount separately stated for the tangible personal property or digital property shall not be less than the fair market value of similar property sold in a similar transaction not involving the provision of advertising services.

(2) If an advertising agency contracts with a client to provide both advertising services and the sale of tangible personal property or digital property and does not clearly delineate the charges on the customer's invoice, the total billing amount is subject to tax.

Section 5. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(2) At a Kentucky Taxpayer Service Center during business hours; or

(3) On the department website at <http://revenue.ky.gov>.~~[Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) Revenue Form 10A100 "Kentucky Tax Registration Application For Withholding, Corporation, Sales and Use Taxes, and Motor Vehicle Tire Fee", October 2002;~~

~~(b) Revenue Form 51A102 "Sales and Use Tax Return", July 2003;~~

~~(c) Revenue Form 51A105 "Resale Certificate", September 1990; and~~

~~(d) "Uniform Sales and Use Tax Certificate – Multijurisdictional", July 2000.~~

~~(2) These material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

## VOLUME 44, NUMBER 5 – NOVEMBER 1, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, Department of Revenue, 501 High Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email Lisa.Swiger@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to remove outdated language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

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

(a) How the amendment will change this existing administrative regulation: The current version of 103 KAR 26:120 contains repealed statutory references, outdated and unnecessary forms dates and prior Department of Revenue address and contact information. "Revenue Cabinet" is updated to read "Department of Revenue" and "digital property" is input into the verbiage as appropriate pursuant to KRS 139.200. The Streamline Sales Tax is also listed as an option for the exemption certificate. The proposed amendment updates regulatory language to address these issues.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update outdated language and information currently contained in the regulation. Repealed statutory references are removed and replaced with the updated statutory reference, outdated and unnecessary forms dates are removed and DOR contact and address information is updated. "Revenue Cabinet" is updated to read "Department of Revenue" and "digital property" is input into the verbiage as appropriate pursuant to KRS 139.200. The Streamline Sales Tax is also listed as an option for the exemption certificate.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the

amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no cost to implement the proposed amendment.

(b) On a continuing basis: There is no cost to implement the proposed amendment.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation applies equally to all those affected by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 (+/-):

Expenditures (+/-):

Other Explanation:



FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)

103 KAR 27:180. Vending machines.

RELATES TO: KRS 139.010, 139.470

STATUTORY AUTHORITY: KRS 131.130(1)~~[KRS Chapter 131A]~~

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

Section 1. Persons who own vending machines which dispense tangible personal property, or operators of such machines under lease or rental agreements, must obtain a permit to engage in the business of selling tangible personal property and must report and pay to the department the tax upon the gross receipts from sales made through such machines. One (1) permit is sufficient for all machines of one (1) owner or operator.

Section 2. The owners or operators of vending machines shall be responsible for reporting and paying the tax on the total gross receipts even though the owner or operator of the place in which the machines are located receives a share of such gross receipts under a commission or concession contract. In reporting and paying such tax, the owner or operator shall be deemed the agent of the operator or owner of such place of business in which the machine is located to the extent of commissions due the latter. Gross receipts from sales of tangible personal property made in portions of fifty (50)~~[twenty-five (25)]~~ cents or less through coin operated bulk vending machines where unsorted merchandise is dispensed in approximately equal portions are exempt from the sales and use tax (KRS 139.470(6)).

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

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

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

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

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

(a) How the amendment will change this existing administrative regulation: The current version of 103 KAR 27:180 contains an incorrect statutory authority reference to KRS 13A instead of KRS 131.130, and an outdated reference to certain gross receipts exempt from sales tax. KRS 139.470 was amended in HB 253 of the 1998 session of the Kentucky General Assembly to exempt "Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty (50) cents or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the department." Currently, 103 KAR 27:180 contains the former amount prior to HB 253 of "twenty-five (25) cent or less" of these transactions are exempt. The proposed amendment updates this regulatory language to correct only these two issues.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to provide current information found in the authorizing statutes to conform to KRS 131.130 and KRS 139.470.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All owners or operators of vending machines who must report the sale of tangible personal property through vending machines for sales tax purposes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

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

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entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no cost to implement the proposed amendment beyond the use of current staff and currently budgeted department funding.

(b) On a continuing basis: There is no cost expected on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current department budgeted funding and staff will provide 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: There is no additional cost to implement and enforce the proposed amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be equally applied to all taxpayers affected by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 139.470.

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? There is no expected increase in revenue for any office, district or government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 28:051. Leases and rentals.

RELATES TO KRS 138.460, 138.463, 139.010, 139.105, 139.200, 139.210, 139.270, 139.280, 139.290, 139.310, 139.330, 139.340, 139.430, 139.471, 139.484, 139.600, 139.620

STATUTORY AUTHORITY: KRS 131.130(1), 139.710

NECESSITY FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the department to make administrative regulations for the administration and enforcement of all tax laws in this state, and KRS 139.710 requires the department to administer the provisions of KRS Chapter 139, regarding sales and use taxes. This administrative regulation sets forth requirements for leases and rentals of tangible personal property or digital property relating to the sales and use tax law.

Section 1. Definitions. (1) "Primary property location" means the location as indicated by an address for the property provided by the lessee that is available to the lessor from the lessor's records maintained in the ordinary course of business, if use of this address does not constitute bad faith. This location shall not be altered by intermittent use of the property at different locations.

(2) "Transportation equipment" means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(b) Trucks and truck-tractors with a gross vehicle weight rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:

1. Registered through the International Registration Plan; and
2. Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(c) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal authority or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

(d) Containers designed for use on and component parts attached or secured on the items set forth in paragraphs (a) through (c) of this section.

Section 2. Registrants. (1) A person engaged in leasing or renting tangible personal property or digital property for use in Kentucky is a retailer and shall:

(a) Register with the Department of Revenue to obtain a retail sales and use tax permit; and

(b) Report and pay the applicable tax derived from the gross lease or rental receipts.

(2) Each period for which a lease or rental is payable shall be considered a complete transaction in determining a retailer responsible for the tax in accordance with KRS 139.010[KRS 139.110(1)(e)].

Section 3. Gross Receipts. (1) Gross receipts from the lease or rental of tangible personal property or digital property shall include:

(a) The total amount of payments, or consideration received by the lessor from the lessee;

(b) Payments paid by the lessee to a third party for the benefit of the lessor which are required by the terms of the agreement; and

(c) All itemized charges for costs incurred by the lessor and passed on to the lessee as separate charges in the lease or rental agreement including finance or interest charges, property tax, and insurance charges.

(2) Charges by a lessor to a lessee for a separately-executed maintenance agreement, which is not a part of the lease or rental agreement, shall not be subject to tax.

Section 4. Tax Responsibility. (1) The retailer/lessor leasing or renting tangible personal property or digital property within Kentucky shall be required to collect the sales tax from the customer/lessee.

(2) Every out-of-state retailer leasing or renting tangible personal property or digital property for storage, use or other consumption in this state shall be required to collect the use tax from the purchaser and remit the tax on gross lease or rental receipts to the Department of Revenue.

(3) The lessee's responsibility for the use tax shall not be relieved until payment of the amount due has been made to the

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Department of Revenue or to a retailer/lessor authorized to collect the Kentucky tax.

Section 5. Resale. (1) A lessor may claim a resale exemption for tangible personal property or digital property purchased exclusively for lease or rental.

(2) Parts and accessories purchased by the lessor which become part of the leased or rented property may also be purchased under a resale exemption. However, property purchased by a lessee to maintain leased or rented property of a lessor shall be subject to the sales and use tax.

(3) Tangible personal property or digital property purchased for resale without payment of the tax and to be utilized exclusively for lease or rental, and so used, but subsequently used by the retailer/lessor for some purpose other than lease or rental shall become subject to tax upon this subsequent use. The tax shall be measured by purchase price of the property and shall be in addition to the tax due on the lease or rental receipts.

(4) Tangible personal property or digital property purchased in part for lease or rental and in part for use shall not be purchased from a vendor under a resale exemption and shall be subject to tax.

(5) A retailer who purchases tangible personal property or digital property for outright sale, but, while holding the property in the retailer's inventory, makes use of the property in the retailer's business through lease or rental shall be responsible for the applicable tax to the lease or rental receipts.

(6) Tangible personal property or digital property purchased by a retailer engaged exclusively in leasing or renting the property may be eligible for a deduction from the retailer's gross lease or rental receipts for an amount equal to the purchase price of the property used exclusively for lease or rental if the retailer has paid the sales or use tax applicable to the purchase price of the property.

Section 6. Lease with an Exemption Certificate. A lessor of tangible personal property or digital property shall not include within the measure of the tax gross receipts from a lease or rental if the lessor takes from the lessee a certificate of exemption as evidence that the property leased will be used in an exempt manner under the sales and use tax law.

Section 7. Motor Vehicles. (1) The lease or rental of motor vehicles, which are for use on the public highways and upon which any applicable tax levied under KRS 138.460 or KRS 138.463 has been paid, shall not be subject to the sales or use tax.

(2) Motor vehicles, which are not subject to the motor vehicle usage tax established in KRS 138.460 or the U-Drive-It tax, established in KRS 138.463, shall be subject to the sales and use tax unless another applicable exemption applies.

Section 8. Reciprocity. (1) The sales and use tax law shall provide for credit against any Kentucky use tax for state sales tax paid in another state which imposes a sales tax substantially identical to that of Kentucky.

(2) Out-of-state lessors who have collected sales tax on a lump-sum basis for their state shall be able to receive credit for the amount paid that other state up to the amount due to Kentucky.

(3) Kentucky shall tax any excess lease or rentals, relating to the lump-sum tax amounts.

(4) Reciprocity shall apply to any tax due Kentucky on lease or rental receipts only if the reciprocal state has levied and is legally due the sales or use tax paid on the lease or rental receipts.

Section 9. Lease of Real, Tangible, Digital and Intangible Property. (1) If lease or rental activity involves the lease or rental of real property, in combination with tangible personal, digital and intangible property, as in the lease or rental of a business operation or establishment, the total amount of the lease or rental shall be subject to the sales and use tax unless the amount applicable to the tangible personal property and digital property is separately stated.

(2) The amount separately stated for the tangible personal property and digital property shall not be less than the fair market

lease or rental value for like property for a like rental or lease period.

(3) The lease or rental of tangible personal property and digital property between separate entities owned by the same or similar stockholders shall be subject to the tax unless otherwise exempted by the sales and use tax law.

(4) The tax shall be levied on the lease or rental amount charged or the fair market lease or rental amount, whichever is greater.

Section 10. General Sourcing Rules. (1) The lease or rental of tangible personal property and digital property, other than property identified in subsection ~~(5)~~~~(3)~~ of this section, shall be sourced according to the provisions of KRS 139.105(1).

(2) For a lease or rental that requires recurring periodic payments, the first periodic payment shall be sourced as follows according to the provisions of KRS 139.105(1).~~(a)~~ Periodic payments made subsequent to the first payment shall be sourced to the primary property location for each period covered by the payment. The primary property location shall not be altered by intermittent use at different locations. Intermittent use shall include business property that accompanies employees on business trips and service calls.

~~(3)~~~~(b)~~ For a lease or rental that does not require recurring periodic payments, the payment shall be sourced the same as a retail sale in accordance with the provisions of KRS 139.105(1)~~paragraph (a) of this subsection (c) of this section~~.

~~(4)~~~~(c)~~ This subsection shall not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

~~(5)~~~~(3)~~ The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, each periodic payment shall be sourced to the primary property location.

(b) For a lease or rental that does not require recurring periodic payments, the payment shall be sourced in accordance with the provisions of KRS 139.105(1)~~subsection (2) of this section~~.

(c) This subsection shall not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, Department of Revenue, 501 High Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email Lisa.Swiger@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

## VOLUME 44, NUMBER 5 – NOVEMBER 1, 2017

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

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

(a) How the amendment will change this existing administrative regulation: The current version of 103 KAR 28:051 contains a repealed statutory reference and an unclear reference regarding the sourcing of certain payments. "Digital property" is also omitted. The proposed amendment updates regulatory language to address these issues.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation. The repealed statutory reference is removed and replaced with the updated statutory reference and clarifying language is provided in Section 10(2)(b) and Section 10(3)(b). "Digital property" is inserted as appropriate pursuant to KRS 139.200 and KRS 139.260.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no cost to implement the proposed amendment.

(b) On a continuing basis: There is no cost to implement the proposed amendment.

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

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

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation updates repealed, outdated or prior information.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 (+/-):  
Expenditures (+/-):  
Other Explanation:

### FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

#### 103 KAR 30:235. Sales[~~of utility services~~] to the federal government.

RELATES TO: KRS 139.260, 139.470

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 139.470 was amended by Ky Acts Chapter 77, Pt III, Sec 1[The 1976 Kentucky General Assembly amended the sales tax law] to exempt sales to Kentucky State Government and to local governments in Kentucky, effective July 1, 1976. [~~Sales of utility services to the federal government have continued to be taxed under policy that has been followed since the inception of the sales tax in 1960. All other sales to the federal government had been exempt. Recent research by the Attorney General's Office reveals some case law supporting the government's claim that to continue to tax sales to the federal government constitutes discrimination against the federal government.~~] This administrative regulation explains how the sales tax is to apply to transactions involving the federal government, consistent with the treatment of sales to Kentucky State Government and local governments in Kentucky[case law referred to above]. [Section 1. On and after the 30th day following the effective date of this administrative regulation, sales tax does not apply to receipts from sales to the federal government. This administrative regulation is prospective only and no refunds or credit adjustments will be made for

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purchases made prior to the 30th day following the effective date of this administrative regulation. Also, no assessments will be made on sales that were exempted administratively by the cabinet during that same period.]

Section 1.[2.] The term "federal government" as used in this administrative regulation means federal agencies, instrumentalities or corporations which are exempt from all state taxation under the Federal Constitution or statutes. An agency, corporation or instrumentality is not entitled to the exemption simply because it is regulated by or receives funds or grants from the federal government.

Section 2.[3.] The exemption applies only to sales made directly to the federal government for use in the government function. Any official or employee who uses a[his] position to make a tax-free purchase for[his own] personal use or that of any other person will be subject[himself] to the penalties provided in KRS 139.990 and other applicable laws.

Section 3.[4.] Include sales made directly to the federal government[are to be included] in the gross receipts[to be] entered on line one (1) of the retailer's Kentucky Sales and Use Tax Return (Form 51A102). Retailers may deduct these[such] sales on line six (6)[twenty-one (21)] of the return. Retailers claiming a deduction for sales to the federal government must maintain in their records[files] a copy of the exemption authorization letter issued to the federal agency and a copy of the invoice upon which an official, or an employee exercising comparable authority, of the federal government has signed and acknowledged in writing that delivery of the property was actually made to the federal government.

Section 4.[5.] Contractors may not claim the exemption when[may not be claimed by contractors] purchasing property to be used in fulfilling contracts with the federal government. As provided by 103 KAR 26:070, sales of property to contractors for use in fulfilling contracts with the federal, state, or local governments for erecting, remodeling, or repairing structures or improvement on or to real estate are subject to tax.

Section 5.[6.] All federal government agencies seeking exemption under authority of this administrative regulation must apply to the Division of Sales and Use Tax[Sales and Severance Tax Division] for a tax exemption authorization letter. The application (Form 51A125)[form] may be obtained from the Division of Sales and Use Tax[Sales and Severance Tax Division], 501 High Street, Frankfort, Kentucky 40620[40604] or from one (1) of the department's[cabinet's ten (10)] field offices.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

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

(a) How the amendment will change this existing administrative regulation: The current version of 103 KAR 30:235 contains an outdated reference to a line on the Kentucky Sales and Use Tax Return. The proposed amendment updates regulatory language to address this issue. The outdated reference to line twenty-one (21) on the Kentucky Sales and Use Tax Return is corrected to reference line six (6). The title is updated along with references to the "Sales and Severance Tax Division" and the DOR address. NECESSITY, FUNCTION AND CONFORMITY is updated to clarify the purpose of the regulation. Section 1 is deleted and language is updated throughout to bring up to date and clarify the tax treatment in the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation. The title is updated along with references to the "Sales and Severance Tax Division" and the DOR address. Section 1 is deleted and language is updated throughout to bring up to date and clarify the tax treatment in the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no cost to implement the proposed amendment.

(b) On a continuing basis: There is no cost to implement the proposed amendment.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: There is no additional cost to implement and enforce the proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? No. Tiering is not applied as the proposed amended regulation applies to all affected 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 Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. This amendment is a cleanup effort as part of the Red Tape Reduction Initiative.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 31:030. Direct pay authorization.

RELATES TO: KRS 139.010, 139.260, [139.400,]139.710
STATUTORY AUTHORITY: KRS 131.130, 139.260, 139.660, 139.720

NECESSITY, FUNCTION, AND CONFORMITY: KRS [139.130,]131.130(1), 139.260,[139.400,] and 139.710 authorized the Department of Revenue[Revenue Cabinet] to promulgate administrative regulations for the: (1) assessment, collection, refunding, administration, and enforcement of Kentucky tax laws; and (2) direct pay authorization. This administrative regulation establishes the requirements and procedures for the direct payment of Kentucky sales and use tax on purchases of tangible personal property and digital property excluding energy and energy producing fuels.

Section 1. Definitions. (1) "Direct pay authorization" or "DPA"

means an authorization issued by the Department of Revenue[Revenue Cabinet] that permits a taxpayer to report Kentucky sales and use tax directly to the cabinet on all purchases of tangible personal property and digital property, excluding energy and energy-producing fuels.

(2) "Distribution facility" means a specific location which is used to receive, hold, and ship business inventory.

(3) "Manufacturing" as defined by KRS 139.010(16)[means a process that transforms tangible personal property having no commercial value for its intended use before processing into tangible personal property having appreciable commercial value for its intended use after processing].

Section 2. Qualifications. An applicant shall: (1) Be a person engaged in:

- (a) Manufacturing;
(b) Extracting minerals, ores, clay, stone, coal, or natural gas;
(c) Operating a transportation company; or
(d) Operating a distribution facility; and
(2) Hold a valid Kentucky retail sales and use tax permit; and
(3) Have a record of timely payment of taxes administered by the cabinet;
(4) Maintain records in such a manner that, as applicable, the amount of tangible property and digital property purchased from:
(a) A Kentucky vendor may be properly reported; or
(b) An out-of-state vendor for storage, use, or other consumption in Kentucky or elsewhere can be verified; and
(5) Be engaged in business in Kentucky, and own property, other than office furniture and equipment, that is located in more than one (1) state; or
(6)(a) Have been in engaged in business in Kentucky in excess of twenty-four (24) months; and
(b) Have purchased tangible personal property or digital property of at least ten (10) million dollars for use in his Kentucky operations in the preceding calendar or fiscal year, as applicable.

Section 3. Application. (1) An applicant shall apply to the department[cabinet] for a DPA by submitting a fully completed[upon] Revenue Form 51A112, "Application for Direct Pay Authorization".

- (2) The application shall include: [(a) The applicant's:
1. Legal business name;
2. Federal Employer Identification Number;
3. Date operations began in Kentucky;
4. Kentucky business address;
5. Mailing address;
6. Type of operation: manufacturing/processing; mining/quarrying; transportation company; or distribution facility;
7. Telephone and fax numbers;
8. Kentucky Employer's Withholding Account Number;
9. Kentucky Corporation Income and License Account Number;
and
10. Kentucky Sales and Use Account Number;]

(a)[(b)] If an applicant is engaged in business and has property, other than office furniture and equipment, located in more than one (1) state, the location of the applicant's home office, and plants or places of business;

(b)[(c)] If the applicant is not engaged in business and does not have property, other than office furniture and equipment, located in more than one (1) state, the amount of tangible property and digital property purchased for use in the applicant's Kentucky business operations in the last calendar or fiscal year, as applicable;

(c)[(d)] Statements relating to records and documentation required by Sections 2(3) and (4) and 7 of this administrative regulation;

(d)[(e)] Most recent year's financial statement certified by the applicant's chief financial officer or a certified public accountant; and

(e)[(f)] A detailed description of the records maintained to document that the amount of taxable purchases is properly reported.

Section 4. Requirements. A DPA holder shall:

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(1) Furnish all of his vendors, excluding vendors of energy and energy-producing fuels, with a copy of Revenue Form 51A110, "Direct Pay Authorization";

(2) Report and remit the sales or use tax on all taxable purchases of tangible personal property and digital property, excluding energy and energy-producing fuels, that would have been remitted by the applicant's retailer if the DPA had not been granted; and

(3) Report all taxable purchases in accordance with KRS 139.540, 139.550, ~~[439.560]~~ and 139.590.

Section 5. Vendor Responsibility. (1) A vendor shall be relieved of the duty of collecting and paying the sales or use tax if he:

(a) Accepts a copy of a company's DPA ~~[in good faith]~~; and

(b) Retains the copy in his records pursuant to KRS 139.720(2).

(2) A vendor shall:

(a) Include sales for which a DPA has been accepted in Line 1, Gross Receipts, of Revenue Form 51A102, "Sales and Use Tax Return"; and

(b) Take a corresponding deduction on Line 19, which shall be labeled "DPA Sales".

Section 6. Limitations. A DPA holder shall not:

(1) Issue the DPA to a construction contractor; or

(2) Allow a contractor to use the holder's DPA to purchase, lease, or rent tangible personal property, digital property, or purchase taxable services.

Section 7. Records. A DPA holder shall maintain records pursuant to KRS 139.720(2) and 103 KAR 31:020.

Section 8. Bond Requirement. Upon demand of the ~~department~~~~[cabinet]~~, the applicant or holder of a direct pay authorization shall execute pursuant to KRS 139.660, a bond or an indemnity agreement securing the payment of the sales or use taxes to the ~~department~~~~[cabinet]~~ in an amount not less than \$75,000 and not greater than three (3) times the estimated monthly liability.

Section 9. Transfer of Authorization. (1) A DPA shall not be transferable upon the sale, lease, or other transfer of the business.

(2) A DPA holder shall notify the ~~department~~~~[cabinet]~~ within ten (10) days of the effective date of the sale, lease, or other transfer of the business.

Section 10. Termination. (1) The ~~department~~~~[cabinet]~~ shall terminate a DPA if the DPA holder:

(a) Fails or ceases to be an eligible taxpayer;

(b) Fails to timely file its sales and use tax returns and timely pay any tax due; or

(c) Fails to comply with any of the provisions of this administrative regulation.

(2)(a) The ~~department~~~~[cabinet]~~ shall notify a DPA holder of the termination by certified mail at his last known address.

(b) Upon receipt of the notification of termination, a DPA holder shall notify all vendors within thirty (30) days of the date of termination.

(3) The effective date of the termination shall be the date of the mailing of the termination notice.

Section 11. Protests. The denial or termination of a DPA may be protested pursuant to KRS 131.110.

Section 12. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(2) At a Kentucky Taxpayer Service Center during business hours; or

(3) On the department website at <http://revenue.ky.gov>.  
~~[Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Application for Direct Pay Authorization, Form 51A112 (12-~~

~~97)";~~

~~(b) "Direct Pay Authorization, Form 51A110 (8-97)"; and~~

~~(c) "Sales And Use Tax Return, Form 51A102 (9-92)".~~

~~(2) This material may be inspected, copied, or obtained at Kentucky Revenue Cabinet, 200 Fair Oaks, Frankfort, Kentucky 40620, or at a Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, Department of Revenue, 501 High Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

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

(a) How the amendment will change this existing administrative regulation: The current version of 103 KAR 31:030 contains repealed statutory references, outdated and unnecessary forms dates, prior Department of Revenue address and contact information and an outdated reference to "good faith" in regards to Direct Pay Authorization requirements. Verbiage is updated to include "digital property" pursuant to KRS 139.200 and KRS 139.260. "Cabinet" is updated several times to "Department" to reflect the organizational structure of the Department of Revenue. Section 3 is streamlined to reference submitting a fully completed certificate and "manufacturing" in Section 3(1) is clarified to mean the definition contained in KRS 139.010(16). The proposed amendment updates regulatory language to address these issues.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove outdated regulatory language and information currently contained in the regulation. Repealed statutory references are removed and replaced with the updated statutory reference, outdated and unnecessary forms dates are removed, DOR contact and address information is updated, and "in good faith" is removed from Section

5(a) of the regulation. Verbiage is updated to include "digital property" pursuant to KRS 139.200 and KRS 139.260. "Cabinet" is updated several times to "Department" to reflect the Department of Revenue. Section 3 is streamlined to reference submitting a fully completed certificate and "manufacturing" in Section 3(1) is clarified to mean the definition contained in KRS 139.010(16).

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

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

revenues are expected to be generated by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)

103 KAR 31:102. Rebate for a governmental public facility.

RELATES TO: KRS 139.010, 139.200, 139.533

STATUTORY AUTHORITY: KRS 131.130(1), 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) requires the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the department to administer the provisions of KRS Chapter 139 relating to the assessment, collection, refund, and administration of sales and use taxes. KRS 139.533 establishes the sales tax rebate provisions for sales of admissions to and sales of tangible personal property at a governmental public facility. This administrative regulation establishes the requirements and procedures to apply for the sales tax rebate created by KRS 139.533.

Section 1. Definitions. (1) "Effective date" is defined by KRS 139.533(1)(a).

(2) "Governmental entity" is defined by KRS 139.533(1)(b).

(3) "Public facility" is defined in KRS 139.533(1)(c).

Section 2. Registration Process. (1) To determine eligibility for the sales tax rebate under KRS 139.533, the governmental entity shall submit to the Department of Revenue a fully completed Governmental Public Facility Sales Tax Rebate Registration, Form 51A400.

(2) The department shall notify the qualifying governmental entity of the effective date for sales eligible for the sales tax rebate according to the provisions of KRS 139.533(1)(a) and (3).

Section 3. Quarterly Rebate Application Requirements. (1) An approved governmental entity shall file the following within the sixty (60) day timeframe as provided for in KRS 139.533(4):

(a) A fully completed Governmental Public Facility Application for Sales Tax Rebate, Form 51A401; and

(b) A properly executed Vendor Assignment Agreement for Sales at a Qualifying Public Facility, Form 51A402, for any seller other than the qualifying governmental entity whose receipts are included in the rebate request.

(2) To be considered valid, all applications and other documents required shall be postmarked, electronically submitted or, if delivered by messenger, hand-stamped by the department by the date required[~~to qualify for consideration~~].

(3) The department shall pay the rebate amount determined due within the forty-five (45) day timeframe as provided for in KRS 139.533(5).

Section 4. Recordkeeping Requirements. (1) The qualifying governmental entity shall keep adequate and complete records



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supporting each rebate request for at least four (4) years as provided for in KRS 139.720.

(2) The department may audit part or all of the records of all parties involved as necessary to verify the refund request and to ensure compliance with KRS 139.533.

Section 5. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(2) At a Kentucky Taxpayer Service Center during business hours; or

(3) On the department website at <http://revenue.ky.gov>. [Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Governmental Public Facility Sales Tax Rebate Registration", Form 51A400, June 2010;

(b) "Governmental Public Facility Application for Sales Tax Rebate", Form 51A401, June 2010; and

(c) "Vendor Assignment Agreement for Sales at a Qualifying Public Facility", Form 51A402, June 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov)

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

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

(a) How the amendment will change this existing administrative regulation: The current version of 103 KAR 31:102 contains

outdated form dates and Department of Revenue contact information. Verbiage is updated in Section 3(2) to clarify application submission requirements. The proposed amendment updates regulatory language to address these issues.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation. Outdated and unnecessary forms dates are removed and DOR contact and address information is updated. Verbiage is updated in Section 3(2) to clarify application submission requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation with more recently enacted information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no initial cost to implement the proposed amendment.

(b) On a continuing basis: There is no cost on a continuing bases.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budgeted department funds will be used to implement and enforce the proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? No. Tiering is not applied as all taxpayers affected by this regulation will be treated the same.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

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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. This amendment is merely a cleanup of outdated language that needed to be replaced with more recent information.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)

103 KAR 31:111. Sales and purchases for resale.

RELATES TO: KRS 139.260, 139.270, 139.280, 139.290, 139.300, 139.430, 139.440, 139.760, 139.990

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes requirements to consolidate and clarify various provisions of the sales and use tax law as they relate to the authorized issuance of resale certificates by purchasers and acceptance thereof by retailers and sellers.

Section 1. A resale certificate shall either be a "single purchase certificate" or a "blanket certificate". (1) A "Single purchase certificate" shall include an itemization by the purchaser of the property to be purchased. A single purchase certificate may only be used for a single purchase of commodities for resale and shall not be used for subsequent purchases.

(2) A "Blanket certificate" shall include a general description by the purchaser of the kind of property to be purchased for resale in the regular course of business. A purchaser who has executed a blanket certificate shall not be required to execute additional certificates of resale for individual purchases if:

(a) There is no change in the character of the purchaser's operation; and

(b) The purchases are of tangible personal property or digital property of the kind usually purchased by the purchaser for resale.

Section 2. The resale certificate issued by the purchaser shall be in the form of either the "Resale Certificate", Form 51A105, [which is incorporated by reference in 103 KAR 3:020,] the "Streamlined Sales and Use Tax Agreement - Certificate of Exemption", Form 51A260, [which is incorporated by reference in 103 KAR 3:020,] or the Multistate Tax Commission's "Uniform Sales and Use Tax Certificate - Multijurisdiction".

Section 3. If the purchaser is not required to hold a permit because the purchaser is a nonresident purchaser not required to register in Kentucky,[-]

(a) The purchaser may issue a fully completed Streamlined Sales and Use Tax Agreement - Certificate of Exemption (Revenue Form 51A260); or

(b) The purchaser may issue a fully completed Resale

Certificate (Revenue Form 51A105),[and] If the purchaser issues a[is using the] "Resale Certificate", Form 51A105, the purchaser shall note on the face of the certificate that the purchaser is a nonresident purchaser not required to register and obtain a permit in Kentucky. The certificate shall bear the purchaser's signature, name, address, and any other information requested on the form. The purchaser shall clearly mark on the certificate whether it is a single purchase certificate or a blanket certificate.

Section 4. (1) If the retailer or seller has not obtained a completed resale certificate in a timely manner according to the provisions of KRS 139.270, the burden of proving that a sale is exempt as a sale for resale shall be upon the retailer or seller. The retailer or seller may offer proof to the department that the sale in question is not subject to tax in accordance with 103 KAR[Chapter] 1:010.

(2)(a) For example, if a retailer or seller receives a completed resale certificate from a restaurant business for silverware and other table settings only after a department audit, the burden of proof shall be considered "not met" and the retailer or seller shall remain liable for the tax. The items in this example are for use within the restaurant business rather than for resale.

(b) If the retailer or seller receives a completed resale certificate in the course of a department audit for purchases of disposable cups from the same restaurant business, the burden of proof shall be considered "met" because the product is of the type resold in the normal course of the restaurant business.

Section 5. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(2) At a Kentucky Taxpayer Service Center during business hours; or

(3) On the department website at <http://revenue.ky.gov>. [Incorporation by Reference. (1) The "Uniform Sales and Use Tax Certificate - Multijurisdiction", Multi-State Tax Commission, July 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, Department of Revenue, 501 High Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov)

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

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administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

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

(a) How the amendment will change this existing administrative regulation: The current version of 103 KAR 31:111 contains repealed regulatory references as it relates to forms and a prior address and contact information for the Department of Revenue. Section 1(2)(b) is updated to include the "digital property" as authorized in KRS 139.200. Section 3 is updated to include the option for a taxpayer to use Form 51A260 (Streamlined Certificate). Section 4 is updated to more specifically reference 103 KAR 1:010 whereas the current version references 103 KAR Chapter 1. The proposed amendment updates regulatory language to address these issues.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove outdated regulatory language and information currently contained in the regulation. Updates are made referencing digital property, the Streamlined Exemption certificate and 103 KAR 1:010. Repealed regulatory form references are removed and DOR contact and address information is updated.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: Current staff and department funding will be utilized to implement the proposed amendment.

(b) On a continuing basis: There is no cost on a continual basis.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: There is no additional cost to implement and enforce the proposed amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will apply equally to all who are affected by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 (+/-):  
Expenditures (+/-):  
Other Explanation:

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)

103 KAR 31:170. Disaster Area Relief Sales and Use Tax Refunds.

RELATES TO: KRS 139.519, 139.720, 139.770  
STATUTORY AUTHORITY: KRS 131.130(1), 139.519(7)(a), 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the department to administer the provisions of KRS Chapter 139, relating to the assessment, collection, refund, and administration of sales and use taxes. KRS 139.519 establishes the tax refund provisions for sales and use tax paid on building materials purchased for the purpose of repairing or replacing a building damaged or destroyed by a disaster within a disaster area. This administrative regulation establishes the requirements for disaster area relief sales and use tax refunds.

Section 1. Definitions. (1) "Building materials" is defined in KRS 139.519(1)(a).

(2) "Disaster" is defined in KRS 139.519(1)(b).

(3) "Disaster area" is defined in KRS 139.519(1)(c).

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(4) "Qualifying construction" means:

(a) Construction that repairs the portion of a building damaged by a disaster in a disaster area; or

(b) Construction that replaces a building damaged by a disaster in a disaster area. Section 2. Refund Application Requirements. (1) A request for a refund shall be filed with the Department of Revenue after completion of the qualifying construction and within three (3) years from the date the disaster area is declared.

(2) To be considered valid, a refund request shall be postmarked, electronically submitted, or if delivered by messenger, hand-stamped by the department by the date required in subsection (1) of this section[~~to qualify for consideration~~] and shall include the following completed information:

(a) Application for Kentucky Disaster Relief Sales and Use Tax Refund, Form 51A600;

(b) Information Sharing and Assignment Agreement for Disaster Relief Refund Claims, Form 51A601;

(c) Expenditure Report for Building Materials Disaster Relief Refunds, Form 51A602;

(d) Copies of contractor invoices to the legal building owner, if applicable;

(e) Related sample sales receipts of building materials purchased from each vendor;

(f) Photographs of disaster damage and related construction;

(g) Other applicable documents that the applicant believes will support the refund claim; and

(h) One of the following types of documentation:

1. Confirmation letter that the legal building owner is eligible for assistance from the Federal Emergency Management Agency (FEMA), United States Department of Homeland Security because of property damage from the disaster; or

2. A copy of the insurance claim filed for the building damage sustained in the disaster.

(3) Any request for a refund filed with the Department after the three (3) year period established in subsection (1) of this section shall be denied.

Section 3. Record Keeping Requirements. The legal owner of the building and other applicable parties shall keep adequate and complete records supporting the refund request for a period not less than four (4) years as provided for in KRS 139.720. The department may audit the records of all parties involved as necessary to verify the refund request and to ensure compliance.

Section 4. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(2) At a Kentucky Taxpayer Service Center during business hours; or

(3) On the department website at <http://revenue.ky.gov>. [~~Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Application for Kentucky Disaster Relief Sales and Use Tax Refund", Form 51A600, August 2012;~~

~~(b) "Information Sharing and Assignment Agreement for Disaster Relief Refund Claims", Form 51A601, August 2012; and~~

~~(c) "Expenditure Report for Building Materials Disaster Relief Refunds", Form 51A602, April 2012.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 5 p.m.]~~

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the

hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov)

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to provide anyone seeking information on a tax refund for sales and use tax paid on building materials purchased for the purpose of repairing or replacing a building damaged or destroyed by a disaster with the most recent up to date information available.

(2) If 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 current version of 103 KAR 31:170 contains outdated or unnecessary references to forms and form dates, as well as previous Department of Revenue contact information. Verbiage in Section 3(3) is updated to clarify application submission requirements. The proposed amendment updates regulatory language to address these issues.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation that is incorrect or deficient. Outdated or unnecessary forms dates are removed and DOR contact and address information is updated. Verbiage is updated in Section 3(3) to clarify application submission requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to replace outdated information currently contained in the regulation with the most up to date and current information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that may apply for a tax refund for sales and use tax paid on building materials purchased for the purpose of repairing or replacing a building damaged or destroyed by a disaster within a disaster area.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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

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regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: Current department resources will implement this amendment.

(b) On a continuing basis: There is no cost to the department on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current department resources will be utilized to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? No. Tiering is not applied as all taxpayers affected by this regulation will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. This amendment only updates outdated information.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)

103 KAR 41:120. Retention of records.

RELATES TO: KRS 138.135(4),138.195

STATUTORY AUTHORITY: KRS 131.130(1)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. This administrative regulation prescribes rules for the retention of records required to be maintained by cigarette dealers licensed under KRS 138.195 and all other persons required to maintain records under the provisions of KRS 138.135(4) and 138.195.

Section 1. (1) Every licensee or other person required by KRS 138.135(4) and 138.195 to preserve books, records, invoices, and documents shall keep copies of those books, records, invoices, and documents on the immediate premises of each place of business for a period of four (4) years.

~~(2)[This requirement shall be effective for books, records, invoices, and documents created, made, or received on or after:~~

~~(a) July 1, 2013, for licensed distributors, retail distributors, and retailers of tobacco products, in accordance with KRS 138.135; and~~

~~(b) August 1, 2013, for manufacturers and importers of cigarettes, in accordance with KRS 138.195.~~

~~{3} These books, records, invoices, and documents shall be available upon demand during this period of time for inspection by agents of the Department of Revenue.~~

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov)

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

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

(a) How the amendment will change this existing administrative regulation: The current version of 103 KAR 41:120 contains

retention dates that are now expired. This amendment only removes those retention dates which are no longer applicable.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131 by removing erroneous information.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no cost to the department to implement the proposed amendment.

(b) On a continuing basis: There is no cost on an ongoing basis.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? No. Tiering is not applied to this regulation as all parties affected by this regulation are treated exactly the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on the revenues and expenditures of any agency with this amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. This amendment is part of a department regulatory cleanup effort to remove outdated or erroneous information still contained in regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Hairdressers and Cosmetologists  
(Amendment)**

**201 KAR 12:082. Education requirements and school administration[School's course of instruction].**

RELATES TO: KRS 317A.020, 317A.050~~(8)~~, 317A.090  
STATUTORY AUTHORITY: KRS 317A.060~~(4)~~, 317A.090  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060~~(2)(e)~~~~(4)~~ requires the board to promulgate administrative regulations governing the hours and courses of instruction at schools of cosmetology~~[- including their hours and courses of instruction]~~. KRS 317A.090 establishes the requirements for schools of cosmetology. This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions required for students and faculty for~~for~~ schools of cosmetology.

Section 1. Subject Areas. The regular courses of instruction for cosmetology students shall contain courses relating to the~~four~~ 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: [The first area of courses shall relate to professional practices, which shall include]~~

- (a) Principles of Hair Design; [The cosmetology profession:]
- (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.

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(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. [1. Cosmetology vocabulary;

2. Brief history: how it began, and changes; and

3. Ethics: ethics in a beauty salon; and salon conduct;

(b) Salon procedures:

1. Hygiene and good grooming:

a. Personal and public;

b. Personal characteristics; and

c. Responsibilities of a cosmetologist;

2. Professional attitudes and salesmanship:

a. Personality development;

b. Salesmanship and business management;

c. Customer relationship; and

d. Telephone personality;

3. Public relations and psychology:

a. Behavior; and

b. Proper image; and

(c) Specialty services:

1. Facial treatments and make-up:

a. Facial treatment/make-up preparation;

b. Implements and supplies;

c. Procedure in giving a plain facial;

d. Purpose and effect of massage movements;

e. Facial cosmetics;

f. Special problems;

g. Eyebrow arching; and

h. Lash and brow dye and enhancements;

2. Nail technology:

a. Purpose and effect;

b. Preparation;

c. Equipment; and

d. Procedures, including the following:

(i) Plain manicure;

(ii) Oil manicure;

(iii) Removal of stains;

(iv) Repair work;

(v) Hand and arm massage;

(vi) Buffing;

(vii) Application of lacquer; and

(viii) Application of artificial nails.

(2) The second area of courses shall relate to life sciences

(general anatomy), which shall include:

(a) Osteology:

1. Definition; and

2. Functions;

(b) Myology:

1. Definition;

2. Functions; and

3. Types;

(c) Neurology:

1. Definition;

2. Functions;

3. Types (motor and sensory); and

4. Principal nerves of the head, face and neck;

(d) Angiology:

1. Definition;

2. Composition of blood; and

3. Function of blood;

(e) Dermatology:

1. Structure of skin;

2. Functions of skin;

3. Appendages of skin;

4. Conditions of the skin; and

5. Lesions of the skin;

(f) Trichology:

1. Structure of hair;

2. Composition;

3. Blood and nerve supply;

4. Growth and regeneration;

5. Color;

6. Texture;

7. Elasticity;

8. Porosity; and

9. Conditions to be recognized;

(g) Nails:

1. Structure and composition;

2. Growth and regeneration; and

3. Irregularities.

(3) The third area of courses shall relate to physical sciences (chemistry and treatment), which shall include:

(a) Chemistry:

1. Elements, compounds, and mixtures:

a. Properties of;

b. Acid and alkali; and

c. Chemistry of water;

2. Composition and uses of cosmetics:

a. For the body;

b. For the skin and face; and

c. For the scalp and hair;

3. Chemistry of hair lightening;

4. Chemistry of hair coloring;

5. Chemical hair relaxing;

6. Chemistry of make-up;

7. Chemistry of facial treatments;

8. Chemistry of rinses:

a. Soaps and shampoos; and

b. Detergents; and

9. Chemistry of cold waving;

(b) Scalp and hair treatments:

1. Purpose and effects;

2. Preparation and procedure;

3. Use of cap;

4. Electricity and therapeutic ray; and

5. Safety rules;

(c) Shampoos and rinses:

1. Importance of good shampoo;

2. Purpose of effects;

3. Required materials and implements;

4. Brushing and drying;

5. Types of shampoos;

6. Rinses (not colored); and

7. Composition;

(d) Hair coloring:

1. Principal reasons for coloring;

2. Advantages of coloring;

3. Classifications of hair coloring;

4. Variation of products;

5. Procedures; and

6. Safety measures;

(e) Hair lightening:

1. Types of lighteners;

2. Implements and supplies;

3. Procedure;

4. Special problems in hair lightening;

5. Fillers and toners;

6. Removal of aniline derivative tints; and

7. Tint back to natural coloring;

(f) Cold waving:

1. Basic requirements;

2. Scalp and hair analysis;

3. Hair porosity;

4. Hair texture;

5. Hair elasticity;

6. Hair density;

7. Curling rods and chemicals;

8. Variation of permanent wave products;

9. Procedures;

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- 10. Problems; and
- 11. Safety measures; and
- (g) Sterilization and sanitation:
  - 1. Definitions;
  - 2. Importance;
  - 3. Sterilization rules; and
  - 4. Methods of sterilization.

(4) The fourth area of courses shall relate to hair designing or sculpturing, which shall include:

- (a) Hair-shaping:
  - 1. Fundamentals of hair shaping;
  - 2. Correct use of tools;
  - 3. Designing and planning the hair cut;
  - 4. Sectioning and thinning;
  - 5. Razor and shear shaping;
  - 6. Wig shaping; and
  - 7. Safety precautions;
- (b) Hair styling:
  - 1. Finger waving;
  - 2. Pin curls;
  - 3. Hair partings;
  - 4. Artistry hair styling;
  - 5. Dressing of the coiffure;
  - 6. Special consideration in hair styling;
  - 7. Chemical hair relaxing and styling;
  - 8. Facial types; and
  - 9. Hair pressing and types of hot iron curling; and
- (c) Care and styling of wigs:
  - 1. Purpose;
  - 2. Quality;
  - 3. Types of wigs;
  - 4. Ordering wigs;
  - 5. Cleaning;
  - 6. Shaping;
  - 7. Tinting and color rinsing;
  - 8. Setting; and
  - 9. Safety precautions.]

Section 2. A school of cosmetology shall teach the students about the various supplies and equipment used in the usual salon practices.[Section 3. A school shall have the following charts or visual aids available for students' use:

- (1) Charts or visual aids showing anatomy of muscles of face and neck with special reference to the direction of muscle fibers and function of muscle or groups of muscles; and
- (2) Charts or visual aids showing anatomy of nails.]

Section 3[4]. A cosmetology student shall receive not less than 1,500[1,800] hours in clinical class work and scientific lectures with:

- (1) A minimum of 375[450 minimum lecture hours] for science and theory;
- (2) A minimum of 1,085[1,305 minimum] clinic and practice hours; and
- (3) A minimum of forty (40)[Forty-five (45)] hours on the subject of applicable Kentucky statutes and administrative regulations.

(4) A student of cosmetology shall not be permitted to perform chemical services on the public until the student has completed a minimum of 250 hours of instruction.

Section 4. Training Period. (1) A training period for a student shall:

- (a) Be no more than eight (8) hours per day, forty (40) hours per week, and;
- (b) A student shall be allowed thirty (30) minutes per eight (8) hour day 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. 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 the administrative regulations of the board.[Section 6. A school of

cosmetology shall maintain and teach the curriculum established in this section.

(1) The curriculum for freshmen students shall be:

(a) Theory and related theory class, 100 hours, which shall include:

- 1. General theory, including Kentucky cosmetology law and applicable administrative regulations promulgated thereunder;
- 2. Clinical theory; and
- 3. Lecturing theory; and
- (b) Clinical and related theory class (freshman practice class on students or mannequins), 200 hours, which shall include:
  - 1. Cold waves;
  - 2. Facials and make-up;
  - 3. Complete "S" formations or complete finger waves;
  - 4. Pin curl technique;
  - 5. Hair shaping;
  - 6. Hair styling techniques;
  - 7. Lash and brow tint and enhancements;
  - 8. Eyebrow arches;
  - 9. Nail technology;
  - 10. Scalp treatments;
  - 11. Shampooing;
  - 12. Hair coloring, bleaching, and rinsing (mixing and formulas);
  - 13. Heat permanent;
  - 14. Safety measures.

(2) The curriculum for junior and senior students shall be:

(a) Theory and related theory class, 500 hours, including:

- 1. Professional practices;
- 2. Life sciences (general anatomy);
- 3. Physical sciences (chemistry and treatment);
- 4. Hair designing safety measures; and
- 5. Kentucky cosmetology laws and applicable administrative regulations; and

(b) Clinical class, 1,000 hours, including:

- 1. Hair conditioning treatments;
- 2. Scalp treatments;
- 3. Hair shaping;
- 4. Shampoos;
- 5. Cold waves;
- 6. Chemical hair relaxing (permanent wave);
- 7. Complete "S" formation and complete finger waves;
- 8. Pin curl techniques;
- 9. Hair styles;
- 10. Iron curling;
- 11. Hair coloring and toning;
- 12. Bleaches and frostings;
- 13. Facials and make-up;
- 14. Nail technology;
- 15. Lash and brow tints and enhancements;
- 16. Eyebrow arches;
- 17. Color rinses (certified color);
- 18. Wiggery;
- 19. Professional ethics and good grooming;
- 20. Salesmanship;
- 21. Reception desk and telephone answering;
- 22. Recordkeeping;
- 23. Dispensary (procedures for ordering supplies and retail merchandise);
- 24. Personality development;
- 25. Salon management; and
- 26. Public relations.

Section 7. In addition to the regular course of instruction, a cosmetology school may have two (2) related lectures and demonstrations per month.

Section 8. Time not utilized in theory or clinic work shall be used for study periods or library work.

Section 9. A school shall furnish students text books that:

- (1) Have been approved by the board; and
- (2) Are in paper or electronic format.

Section 10. A student of cosmetology shall not be permitted to



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work on the public until the student has completed 300 hours of instruction.

Section 11. A student of cosmetology shall be allowed a total of sixteen (16) hours for out-of-school activities pertaining to the profession of cosmetology per 1,800 hours, not to exceed eight (8) hours per day, if it is reported within ten (10) days of the field trip or education show to the board office on the Certification of Cosmetology Field Trip \* Hours form, or Certification of Cosmetology Student Education Show \* Hours form, as appropriate.

Section 12. A student of cosmetology shall be allowed a total of sixteen (16) hours for attending educational programs per 1,800 hours, not to exceed eight (8) hours per day, if it is reported within ten (10) days of the field trip or education show to the board office on the Certification of Cosmetology Field Trip \* Hours form, or Certification of Cosmetology Student Education Show \* Hours form, as appropriate.

Section 13. A copy of the Kentucky State Board of Hairdressers and Cosmetologists' statutes and administrative regulations shall be made available to all students.]

Section 6[14]. Nail Technician Curriculum. The nail technician course of instruction[curriculum] 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.[Science and theory, 200 hours, which

shall include:

(a)1. Equipment;

2. Sterilization;

3. Sanitation;

4. Chemistry and types of artificial nails;

5. Public and personal hygiene safety measures; and

6. Statutes and administrative regulations governing

cosmetology and nail technology;

(b) Nail condition and manicure techniques;

(c) Hand and arm massage;

(d) Science pertaining to areas of hands and arms;

(e)1. Personality;

2. Grooming;

3. Salon management;

4. Professional ethics; and

5. Cosmetic theory laws;

(f) Nails:

1. Structure and composition;

2. Growth and regeneration; and

3. Irregularities; and

(2) Clinical, 400 hours, which shall include:

(a) Oil and plain manicure;

(b) Nail polish changes:

1. Nail polish changes;

2. Moons;

3. Half moons; and

4. Tips;

(c) Hand and arm massage;

(d) Safety measures;

(e) Care of equipment;

(f) Removal of stains;

(g) Repair work including wraps and tips;

(h) Buffing;

(i) Application of lacquer; and

(j) Application of artificial nails.]

Section 7. Nail Technology Hours Required. (1) A student of nail technology shall receive no less than 600 hours in clinical and theory class work with:

(a) A minimum of 210 lecture hours for science and theory;

(b) A minimum of twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and

(c) A minimum of 365 clinic and practice hours.

(2) A student of nail technology shall have completed eighty (80) hours in clinical and related theory class before working on and providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first eighty (80) hours.

Section 8[15]. Apprentice Cosmetology Instructor Curriculum. The course of instruction[study and curriculum] for an apprentice cosmetology instructor shall include no less than[as a minimum, for a total of] 1,000 hours, 425 hours of which must be in direct contact with students, in the following:

(1) Orientation[, fifteen (15) hours];

(2) Psychology of student training[, fifty (50) hours];

(3) Introduction to teaching[, thirty (30) hours];

(4) Good grooming and professional[personality] development[, fifty (50) hours];

(5) Course outlining and development[, forty (40) hours];

(6) Lesson planning[, forty-five (45) hours];

(7) Teaching techniques (methods)[, eighty (80) hours];

(8) Teaching aids, audio-visual techniques[, eighty (80) hours];

(9) Demonstration techniques[, fifty-five (55) hours];

(10) Examinations and analysis[, sixty (60) hours];

(11) Classroom management[, forty-five (45) hours];

(12) Recordkeeping[, twenty-five (25) hours];

(13) Teaching observation[, sixty-five (65) hours];

(14) Teacher assistant[, ninety (90) hours]; and

(15) Pupil teaching (practice teaching)[, 270 hours].

Section 9[16]. 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 17. All records of apprentice instructors' hours earned shall be recorded on the Monthly Attendance Report form supplied by the board office on or before the tenth day of each month.]

Section 10[18]. Schools may enroll persons[The board may permit an individual to enroll in a school] for a special brush-up course in any subject. [of the following subjects:

(1) Permanent waving, and all chemical control;

(2) Nail technology, hand and arm massage, and application of artificial nails;

(3) All iron curls;

(4) Facials;

(5) Hair coloring and bleaching;

(6) Scalp massage;

(7) Hair shaping, trimming, and thinning;

(8) Science; or

(9) Hair dressing and styling.]

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Section 11. 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 Massage;
  - (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 12. Esthetician Hours Requirements. (1) A student of esthetics shall not receive no less than 1,000 hours in clinical and theory class work with:

- (a) A minimum of 365 lecture hours for science and theory;
  - (b) A minimum of thirty-five (35) hours on the subject of applicable Kentucky statutes and administrative regulations; and
  - (c) A minimum of 600 clinic and practice hours.
- (2) A student of esthetics shall have completed 150 hours in clinical and related theory class before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first 150 hours.

Section 13. 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 must 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 Form.

Section 14. Student Records. (1) Each school shall maintain a daily attendance record for all full-time students, part-time students, and apprentice instructors.

- (2) Each school shall keep a record of each student's practical work and work performed on clinic patrons.
- (3) Each school shall maintain a detailed record of all student enrollments, withdrawals, and dismissals for a period of five (5) years.
- (4) Each school shall make records required by this Section available to the board and its employees upon request.

Section 15. Certification of Hours. (1) Schools shall forward 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 cosmetology school.

(2) No later than the 10th day of each month, a cosmetology 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.

Section 16. No Additional Fees. Schools shall not charge students additional fees beyond the contracted amount.

Section 17. Instructor Licensing and Responsibilities. (1) A person employed by a cosmetology school for the purpose of teaching or instruction shall be licensed by the board as a cosmetologist instructor and properly shall post his or her license as required in 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) Cosmetology schools shall not permit an instructor to perform cosmetology 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 school of cosmetology.

(7) A properly qualified, licensed individual may demonstrate a new process, preparation, or appliance in the presence of a licensed instructor in a licensed school.

Section 18. School Patrons. All services rendered in a cosmetology school to the public shall be performed by students. Instructors may teach and aid the students in performing the various services.

Section 19. 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 school of cosmetology who desires to transfer hours from an out of state cosmetology school shall, prior to enrollment, provide to the board certification from the state agency that governs the out of state cosmetology school the credit hours obtained in that state.

(4) If the applicant is enrolled in a board approved cosmetology program at an approved Kentucky high school, the diploma, GED, or equivalency requirement this Section is not necessary until examination.

Section 20. Certificate of Enrollment. Schools shall submit to the board the student's digital enrollment, accompanied by the applicant's proof of education above, within ten (10) business days of enrollment.

Section 21. Student Compensation. Schools shall not pay a student a salary or commission while the student is enrolled at the school.

Section 22. Transfer. A student desiring to transfer to another cosmetology 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 23. Refund Policy. A school shall include the school's refund policy in school-student contracts.

Section 24. Student Complaints. A student may file a complaint

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with the board concerning the school in which the student is enrolled, by following the procedures outlined in 201 KAR 12:060.

Section 25. Student Leave of Absence. (1) The school shall report a student's leave of absence to the board within ten (10) business days. The leave shall be reported:

(a) In writing from the student to the school; and

(b) Clearly denote the beginning and end dates for the leave of absence.

Section 26. Student Withdrawal. Within ten (10) business days from a student's withdrawal, a cosmetology school shall report the name of the withdrawing student to the board.

Section 27. Laws and Regulation Material. A cosmetology school shall provide an informational copy of KRS Chapter 317A and 201 KAR Chapter 12 to each student upon enrollment.

Section 28. Credit for hours completed. (1) The board shall credit hours previously completed in a licensed school of cosmetology as follows:

(a) Full credit (hour for hour) for hours completed within five (5) years of the date of school enrollment;

(b) No credit for hours completed five (5) or more years from the date of school enrollment.

Section 29[49]. Incorporation by Reference. (1) The following material is incorporated by reference: "Certification of Student Extracurricular Event Form" Form, September 2017[(a) Certification Of Cosmetology Field Trip \* Hours", 2003;

(b) "Certification Of Cosmetology Student Education Show \* Hours", 2003; and

(c) The "Monthly Attendance Report" Form, 2003.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 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: October 12, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2017, at 9:00 a.m., at the Kentucky Board of Hairdressers and Cosmetologists. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Julie M. Campbell, Board Administrator, 111 St. James Ct., Ste A., Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481, email [julie.campbell@ky.gov](mailto:julie.campbell@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions required by students and faculty for schools of cosmetology.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to guarantee a standardization of education for licensed cosmetology schools that

complies with state statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation must be amended to comply with recent statutory amendments to KRS 317A.050 and 317A.090. Those amendments reduced the curriculum requirements for cosmetology schools from 1,800 to 1,500 instructional hours.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation outlines and defines education standards and the quantity of course hours required to meet the education standards necessary for licensing exams in the Commonwealth by the Kentucky Board of Hairdressers and Cosmetologists.

(2) If 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 reduce the current curriculum from 1,800 to 1,500 hours to comport with the recent amendments to KRS 317A.050 and 317A.090. In addition to the reduction in instructional hours, this amendment also updates other aspects of course curriculum and eliminates unnecessary and duplicative language in the existing regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to comply with House Bill 271, which amended KRS 317A.050 and 317A.090. KRS 317A.060(2)(e) requires the Board to promulgate administrative regulations addressing the hours and courses of instruction at cosmetology schools. This amendment will conform the regulation to the statutory amendment reducing the curriculum to 1,500 hours, which has been effective since June 29, 2017.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides curriculum guidelines for education based on the current statutory requirement of 1,500 hours of instruction.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a regulatory scheme for licensed cosmetology schools that is consistent with the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 62 licensed cosmetology schools and approximately 10,000 students affected by this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed cosmetology schools have already begun enrolling students into program using a 1,500-hour curriculum. However, this amendment is necessary to ensure that licensed schools are provided the necessary regulatory guidance and may maintain their current accreditation by national associations. Schools will provide students a course curriculum that is consistent with the statutes and 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 anticipated cost to licensed schools because of this amendment. Schools have already shifted their course curriculum to 1,500-hour program to comply with the statute.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed schools will be able to continue enrolling students into program based upon the statutory 1,500-hour curriculum requirement. Kentucky's regulatory scheme for cosmetologist licenses will fully comply with its authorizing statutes, and be more closely aligned with similar licensing schemes of other states.

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

(a) Initially: No additional funds are necessary initially to implement this administrative regulation.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current funding will not change.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created or increased directly or indirectly by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply to all cosmetology schools and students.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Hairdressers and Cosmetologists.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050, KRS 317A.060, and KRS 317B.020.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? No additional cost.

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

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

#### GENERAL GOVERNMENT CABINET Board of Alcohol and Drug Counselors (Amendment)

#### 201 KAR 35:040. Continuing education requirements.

RELATES TO: KRS 309.085(1)(b)

STATUTORY AUTHORITY: KRS 309.0813(2), 309.085(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.813(2) and 309.085(1)(b) authorize the Board of Alcohol and Drug Counselors to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Basic Continuing Education Requirements. (1)(a) A minimum of ten (10) continuing education hours each year shall be accrued by each person holding a registration as an alcohol and drug peer support specialist.

(b) A minimum of sixty (60) continuing education hours shall be accrued by each person holding a certificate as a certified alcohol

and drug counselor during the three (3) year certification period for renewal with at least three (3) continuing education hours in ethics.

(c) A minimum of sixty (60) continuing education hours shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor during the three (3) year licensure period for renewal with at least three (3) continuing education hours in ethics.

(d) A minimum of twenty (20) continuing education hours each year shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor associate. A licensed clinical alcohol and drug counselor associate shall obtain at least three (3) continuing education hours in ethics during the renewal cycle.

(2) All continuing education hours shall be relevant to the field of alcohol and drug counseling.

(3) A credential holder shall determine prior to attending a specific continuing education program that the program:

(a) Has been approved by the board; or

(b) Is offered or sponsored by an organization approved by the board to provide continuing education programs.

(4) If the specific continuing education program is not pre-approved as established in subsection (3) of this section, the certificate holder may apply for board approval by providing the information required by Section 4 of this administrative regulation.

(5) A credential holder shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management as required by KRS 210.366. The suicide assessment, treatment, and management continuing education course shall be approved by the board, be provided by an entity identified in Section 2(4)(b) of this administrative regulation, or be approved by one (1) of the following boards:

(a) Kentucky Board of Social Work;

(b) Kentucky Board of Licensure of Marriage and Family Therapists;

(c) Kentucky Board of Licensed Professional Counselors;

(d) Kentucky Board of Licensure for Pastoral Counselors;

(e) Kentucky Board of Examiners of Psychology; or

(f) Kentucky Board of Licensure for Occupational Therapy.

#### Section 2. Methods of Acquiring Continuing Education Hours.

(1) Continuing education hours applicable to the renewal of the credential shall be directly related to the professional growth and development of a credential holder.

(2) Continuing education hours may be earned by:

(a) Attending a continuing education program that has prior approval by the board;

(b) The completion of appropriate academic coursework; or

(c) Other alternative methods approved by the board in accordance with subsection (6) of this section.

(3) At least fifty (50) percent of the required continuing education hours for a credential holder shall be earned through live, face to face, continuing education presentations.

(4) Attendance at continuing education programs automatically approved by the board.

(a) A program relevant to the practice of alcohol and drug counseling that is provided, approved, or sponsored by any of the providers listed in paragraph (b) of this subsection shall be:

1. Approved without further review; and

2. Exempt from the program fee established in 201 KAR 35:020, Section 9.

(b) The provisions of this subsection shall apply to the following providers:

1. The National Association of Addiction Professionals (NAADAC) and its member boards;

2. The International Certification and Reciprocity Consortium (ICRC);

3. The Kentucky Cabinet for Health and Family Services, Division of Mental Health and Substance Abuse and its subcontractors;

4. The Kentucky School of Alcohol and Drug Studies;

5. An Addiction Technology Transfer Center (ATTC);

6. State or United State Regional Addiction Training Institute;

or

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7. Clinical Applications of the Principles on Treatment of Addictions and Substance Abuse (CAPTASA).

(5)(a) Academic coursework. An academic course, as defined in 201 KAR 35:010, Section 1(1), shall not require board review or approval.

(b) A general education course, or elective designated to meet academic degree requirements, shall be acceptable for continuing education credit if it is relevant to the practice of alcohol and drug counseling.

(c) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling fifteen (15) continuing education hours.

(6) Alternative methods for obtaining continuing education hours; programs requiring board review and approval. The following activities shall be reviewed by the board to determine whether or not the activity complies with the requirements of Section 3(2) of this administrative regulation:

(a)1. A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection (4)(b) of this section; or

2. A program or academic course presented by the credential holder, who shall earn two (2) continuing education hours for each contact hour of instruction, unless it is repeated instruction of the same course; or

(b) A relevant publication in a professionally recognized or juried publication authored by the credential holder, who shall earn continuing hours as follows:

1. Five (5) continuing education hours for each published abstract or book review in a refereed journal;

2. Ten (10) continuing education hours for each book chapter or monograph;

3. Fifteen (15) continuing education hours for each published article in a refereed journal; and

4. Twenty (20) continuing education hours for each published book.

Section 3. Procedures for Preapproval of Continuing Education Programs. (1) An applicant seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least thirty (30) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.

(2) A continuing education activity shall be qualified for approval if the activity:

(a) Is an organized program of learning;

(b) Pertains to subject matter relating to alcohol and drug counseling;

(c) Enhances the professional competence of the credential holder by:

1. Refreshing knowledge and skills; or

2. Educating on a new topic or subject; and

(d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.

(3)(a) The board may monitor or review a continuing education program approved by the board, in accordance with this section.

(b) Upon evidence of significant variation in the program presented from the program approved, the board shall withdraw approval of the hours granted to the program.

Section 4. Subsequent Approval of Continuing Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is subsequently secured from the board.

(2) The following information shall be submitted for board review of a program:

(a) A published course or seminar description;

(b) The name and qualifications of the instructor;

(c) A copy of the program agenda indicating hours of education;

(d) Number of continuing education hours requested;

(e) Official certificate of completion or college transcript from the sponsoring agency or college; and

(f) Application for continuing education credits approval.

Section 5. Application for Approved Sponsor. (1) A company, individual, or association that wishes to be designated as an approved sponsor of continuing education shall complete a Continuing Education Sponsor Application incorporated by reference in 201 KAR 35:020, and pay the provider fee established in 201 KAR 35:020, Section 9.

(2) An approved sponsor of continuing education shall be allowed to advertise the program as pre-approved to meet the continuing education requirements for credential renewal.

(3)(a) Approval shall be for one (1) year from date of approval unless substantial course changes occur.

(b) For purposes of this section, a substantial course change shall be a change in the curriculum in excess of twenty (20) percent.

Section 6. Responsibilities and Reporting Requirements of Credential Holder; Audit. (1)(a) During the renewal period, the board shall review at least fifteen (15) percent of all credential holders' documentation supporting the completion of the appropriate number of continuing education hours through a random audit process.

(b) Copies of supporting documentation submitted to the board shall be shredded and shall not be returned to the certificate holder upon completion of the audit process.

(c) Verification of continuing education hours shall not otherwise be reported to the board.

(2) A credential holder shall:

(a) Be responsible for obtaining the required continuing education hours;

(b) Identify personal continuing education needs and seek activities that meets those needs;

(c) Seek ways to integrate new knowledge, skills, and activities;

(d) Select approved activities by which to earn continuing education hours;

(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as established in Section 3 of this administrative regulation;

(f) Document attendance, participation in, and successful completion of continuing education activity; and

(g) Maintain records of continuing education hours for five (5) years from the date of the offering of the continuing education activity.

(3) The following items may be used to document continuing education activity:

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor;

(d) Receipt for the fee paid to the sponsor; or

(e) Written summary of experiences that are not formally or officially documented otherwise.

(4) Failure to comply with this administrative regulation shall constitute a violation of KRS 309.085(1)(b) and shall result in board:

(a) Refusal to renew credential;

(b) Suspension of credential; or

(c) Revocation of credential.

Section 7. Carry-over of Continuing Education Hours Prohibited. Continuing education hours earned in excess of those required pursuant to Section 1 of this administrative regulation shall not be carried forward.

Section 8. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability or serious injury of the credential holder;

(b) Serious illness of the credential holder or of an immediate family member; or

(c) Death or serious injury of an immediate family member.

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(2) A written request for waiver or extension of time involving medical disability or illness shall be:

- (a) Submitted by the certificate holder; and
- (b) Accompanied by a verifying document signed by a licensed physician or an advanced practice registered nurse.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the credential holder shall reapply for the waiver or extension.

Section 9. Continuing Education Requirements for Reinstatement or Reactivation of a Credential. (1) A person requesting reinstatement of certification or licensure shall:

(a) Submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or

(b) Obtain sixty (60) hours of continuing education within six (6) months of reinstatement of certification or licensure.

(2) Failure to obtain sixty (60) hours within six (6) months shall result in termination of certification or licensure.

(3) A person requesting reinstatement of a registration shall:

(a) Submit evidence of receiving thirty (30) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or

(b) Obtain ten (10) hours of continuing education within six (6) months of reinstatement of registration.

(4) Failure to obtain ten (10) hours within six (6) months shall result in termination of registration.

(5) A person requesting reactivation of registration, certification, or licensure shall submit evidence of receiving twenty (20) hours of continuing education within one (1) year immediately preceding the date that reactivation is requested. A minimum of ten (10) hours shall be live, face to face.

(6) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 1 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Continuing Sponsor Application Form", 2008; and
- (b) "KBADC Form 18, Continuing Education Program Application", June 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, telephone (502) 564-3296 ext. 222, Monday through Friday, 8:30 a.m. to 4:30[5:00] p.m.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2017, at 9:00 a.m. at Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on November 30, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed

administrative regulation to:

CONTACT PERSON: Kelly Walls, Board Administrator, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8814, fax (502) 696-5898, email Kelly.Walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Brian Judy, phone (502) 696-5630, fax (502) 564-6801, email [Brian.Judy@ky.gov](mailto:Brian.Judy@ky.gov); and Kelly Walls

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a continuing education requirement for a credential holder to maintain competency in the practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the continuing education requirements of a credential holder and protect the public seeking alcohol and drug related services.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes the continuing education requirement required to be completed to have a registration, certification, or license activated.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish a continuing education requirement for a credential holder who placed his or her registration, certification, or license on inactive status as allowed by 201 KAR 35:080.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing a continuing education requirement for all credential holders on inactive status.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 490 Licensed Clinical Alcohol and Drug Counselors, 7 Licensed Clinical Alcohol and Drug Counselor Associates, 728 Certified Alcohol and Drug Counselors, 711 Temporary Certified Alcohol and Drug Counselors, 89 Temporary Registered Alcohol and Drug Peer Support Specialists, and one 5 Registered Alcohol and Drug Peer Support Specialist.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will be required to comply with the continuing education requirement or be subject to possible disciplinary action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only new cost associated to the amendment relates to the new created continuing education requirements for the new registrants and licensees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The credential holders will know the continuing education requirements expected of them by the

board.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1) and (2).

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

#### GENERAL GOVERNMENT CABINET Board of Alcohol and Drug Counselors (Amendment)

#### 201 KAR 35:055. Temporary Registration or Certification.

RELATES TO: KRS 309.083, 309.0831

STATUTORY AUTHORITY: KRS 309.0813(1), (5), 309.083, 309.0831

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) and (5) authorize the board to promulgate administrative regulations establishing the requirements for registering with the Board of Alcohol and Drug Counselors as a registered alcohol and drug peer support specialist, certified alcohol and drug counselor, licensed clinical alcohol and drug

counselor associate, or licensed clinical alcohol and drug counselor. This administrative regulation establishes the requirements for temporary credentials.

Section 1. Application for Temporary Registration. (1) An applicant for temporary registration as a certified drug and alcohol peer support specialist may submit an application after the requirements established in KRS 309.0831(1), (2), (6), (7), and (10) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed KBADC Form 1, incorporated by reference in 201 KAR 35:020. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);

2. Proof of a high school diploma or equivalent;

3. A signed agreement to abide by the standards of practice and code of ethics approved by the board;

4. KBADC Form 2, Attestation of Recovery, in which the applicant declares that he or she has been in recovery for a minimum of two (2) years from a substance-related disorder; and

5. A supervision agreement signed by the applicant and the applicant's supervisor.

Section 2. Application for Temporary Certification. (1) An applicant for temporary certification as a certified alcohol and drug counselor may submit KBADC Form 1, incorporated by reference in 201 KAR 35:020, after the requirements established in KRS 309.083(1), (2), (6), (7), and (10) are met.

(2) The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);

2. An official transcript for all levels of education required for certification;

3. A signed agreement to abide by the standards of practice and code of ethics approved by the board; and

4. A supervision agreement signed by the applicant and the applicant's supervisor.

Section 3. Period of Temporary Credential. (1) The period of a temporary credential shall be terminated upon the passage of two (2) years from issuance.

(2) The board may approve an extension of the period of a temporary credential for a maximum of two (2) years if a:

(a) Written request is submitted that is cosigned by the board approved supervisor; and

(b) One (1) of the following[~~circumstances delineated in 201 KAR 35:040, Section 8(1),~~] exists:

1. A circumstance delineated in 201 KAR 35:040, Section 8(1);

or

2. The credential holder presents evidence of insufficient time to complete supervision, training, work experience, or successfully passing the required examination.

(3) The board shall not grant more than two (2) extensions of the period of a temporary credential.

Section 4. Incorporation by Reference. (1) "KBADC Form 2,

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Attestation of Recovery", June 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30[5:00] p.m.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

**PUBLIC HEARING AND COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 29, 2017, at 9:00 a.m. at Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on November 30, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Kelly Walls, Board Administrator, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8814; fax (502) 696-5898, email [Kelly.Walls@ky.gov](mailto:Kelly.Walls@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Brian Judy, phone (502) 696-5630, fax (502) 564-6801, email [Brian.Judy@ky.gov](mailto:Brian.Judy@ky.gov); and Kelly Walls

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the application process for an individual to obtain a temporary registration or certification.

(b) The necessity of this administrative regulation: The necessity of this regulation is provide the board with regulatory control of those individuals who are engaged in peer support services or alcohol and drug counseling prior to full credentialing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for obtaining a temporary registration or certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the application process for an individual to obtain a temporary registration or certification and provide the board with the discipline option when necessary.

(2) If 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 provides a temporary credential holder with more grounds for obtaining an extension of his or her respective credential.

(b) The necessity of the amendment to this administrative regulation: The board has found over time that the list of circumstances to grant an extension of a temporary credential needed to be expanded.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide a temporary credential holder with more options and expedite the process for granting an extension of a temporary credential.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: There are presently 490 Licensed Clinical Alcohol and Drug Counselors, 7 Licensed Clinical Alcohol and Drug Counselor Associates, 728 Certified Alcohol and Drug Counselors, 711 Temporary Certified Alcohol and Drug Counselors, 89 Temporary Registered Alcohol and Drug Peer Support Specialists, and one 5 Registered Alcohol and Drug Peer Support Specialist.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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 individual can obtain a credential during the period the applicant is fulfilling the supervision requirement and course work requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicant will have to pay a fee for the temporary credential.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An individual has a credential during the period the applicant is fulfilling the supervision requirement and course work requirements.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The only new fee is the application fee for a temporary registration in the amount of \$50.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1) and (5), 309.083, 309.0831.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The board cannot determine an exact dollar amount it will be spent or revenue raised as a result of this administrative regulation since it is impossible for the board to calculate how many peer support specialists will submit an application.

(a) How much 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 board cannot determine an exact dollar amount it will be spent or revenue raised as a result of this administrative regulation since it is impossible for the board to calculate how many peer support specialists will submit an application.

(b) How 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 board cannot determine an exact dollar amount it will be spent or revenue raised as a result of this administrative regulation since it is impossible for the board to calculate how many peer support specialists will submit an application.

(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 (+/-): Expenditures will be decreased because the board will not have to pay for the initiation of a KRS 13B administrative hearing process when unwanted by the credential holder.

Other Explanation:

**GENERAL GOVERNMENT CABINET  
Board of Alcohol and Drug Counselors  
(Amendment)**

**201 KAR 35:070. Supervision experience.**

RELATES TO: KRS 309.0814, 309.083(4), 309.0831, 309.0832, 309.0833

STATUTORY AUTHORITY: KRS 309.0813(1), (3), (5), 309.0814(1), 309.083(3), 309.0831(3), 309.0832(10), 309.0833(2), 309.086

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be credentialed. This administrative regulation establishes the standards for the accumulation of required supervised work experience.

Section 1. (1)(a) Peer Support Specialist Supervision. Peer support specialist supervision shall continue throughout the period of registration. The supervision shall include the four (4) following domains:

1. Advocacy;

2. Ethical Responsibility;

3. Mentoring and Education; and

4. Recovery and Wellness Support.

(b) A supervisor of a peer support specialist shall complete and submit KBADC Form 8, Peer Support Specialist Verification of Supervision, that documents the twenty-five (25) hours of direct supervision.

(2) Clinical Supervision for Certification and Licensure Applicants. Clinical supervision shall consist of at least 300 hours and shall include a minimum of ten (10) hours in each of the following twelve (12) core functions:

(a) Screening;

(b) Intake;

(c) Client orientation;

(d) Assessment;

(e) Treatment planning;

(f) Counseling;

(g) Case management;

(h) Crisis intervention;

(i) Client education;

(j) Referral;

(k) Reports and recordkeeping; and

(l) Consultation.

(3)(a) Clinical supervision may occur in individual or in group settings.

(b) The methods of clinical supervision include:

1. Face-to-face;

2. Video conferencing; or

3. Teleconferencing.

(4) A minimum of 200 hours of clinical supervision shall be conducted face-to-face in an individual or group setting.

(5) Clinical supervisors shall complete and submit KBADC Form 13, Verification of Clinical Supervision, which documents the 300 hours of supervision that has occurred during the work experience, in the Application for Certification as an Alcohol and Drug Counselor, Application for Licensure as a Clinical Alcohol and Drug Counselor Associate, or Application for Licensure as a Clinical Alcohol and Drug Counselor, which are incorporated by reference in 201 KAR 35:020.

(6) If the applicant qualifies for licensure, supervision obtained under KRS 309.083 prior to February 5, 2016 shall be calculated toward the 300 hour supervision requirement under KRS 309.0832(10).

Section 2. Except as provided by Section 1(6) of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee submitting a Supervisory Agreement to the board. The supervisor and supervisee shall also submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change unless extenuating circumstances prevent the submission the thirty (30) day requirement.

Section 3. (1) All supervision requirements shall:

(a) Be met with face-to-face individual or group weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and Sections 13 and 14 of this administrative regulation;

(b) Consist of not less than two (2) hours, two (2) times a month in the practice of alcohol and drug counseling; and

(c) Include additional supervision sessions, as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board for certain types of circumstances, such as distance, weather, or serious injury or illness of the supervisor or supervisee.

(3) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional hours of supervision than was previously approved by the board.

(4) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board within thirty (30) days of the termination.

Section 4. (1)(a) A certified alcohol and drug counselor or licensed clinical alcohol drug counselor shall submit a Form 4, Request to Provide Supervision, to become approved by the board to provide supervision.

(b) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.

(2) A board approved supervisor shall obtain a minimum of three (3) continuing education hours in supervision theory or techniques in each three (3) year renewal cycle. The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

(3) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor shall not be the supervisor of record for more than twelve (12) supervisees.

(4) A licensed clinical alcohol and drug counselor associate shall only be supervised by a licensed clinical alcohol and drug counselor.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 309.086 on the part of the supervisee.

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(3) The supervisor shall inform the board immediately of a change in the ability to supervise or in the ability of a supervisee to function in the practice of alcohol and drug counseling in a competent manner.

(4) The supervisor shall control, direct, or limit the supervisee's practice to insure that the supervisee's practice of alcohol and drug counseling is competent.

(5) The supervisor of record shall be responsible for the practice of alcohol and drug counseling by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the supervisor of record.

(6) For each person supervised, the supervisor shall maintain a KBADC Form 13, Verification of Clinical Supervision, for each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. (1) The supervisor of record shall submit the Supervisor Log for each supervisee to the board on an annual basis with a KBADC Form 14, Supervision Annual Report or as directed otherwise by the board.

(2) The report shall include:

(a) A description of the frequency, format, and duration of supervision;

(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and

(c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with each other at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to each other.

(2) A request to have more than two (2) supervisors at one (1) time shall require a written request to the board, which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed clinical alcohol and drug counselor associate, or an applicant for a certificate as a certified alcohol and drug counselor, the supervisor of record shall:

(1) Review all alcohol and drug assessments and treatment plans;

(2) Review progress notes and correspondence on a regular basis to assess the competency of the supervisee to render alcohol and drug services;

(3) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:

(a) Be updated and revised, as needed, and submitted to the board annually;

(b) Include intended format and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(4) At least semi-annually, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror, or as a cotherapist;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee;

(8) Have knowledge of the supervisee's physical and emotional well-being if it has a direct bearing on the supervisee's competence to practice; and

(9) Submit a completed KBADC Form 7, Supervision Evaluation, within thirty (30) days of termination of a peer support

special supervisory agreement.

Section 9. If the supervisee is a peer support specialist, the supervisor of record shall:

(1) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:

(a) Be updated and revised, as needed, and submitted to the board annually;

(b) Include intended format and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(2) Review and countersign all peer recovery service plans;

(3) Review peer recovery notes and correspondence on an as-needed basis to assess the competency of the supervisee to render peer recovery services;

(4) At least once every two (2) months, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or direct observation;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;

(7) Have knowledge of the methods and techniques being used by the supervisee;

(8) Have knowledge of the supervisee's physical and emotional well-being if it has a direct bearing on the supervisee's competence to practice; and

(9) Submit a completed KBADC Form 9, Supervision Evaluation for Peer Support Specialist, within thirty (30) days of termination of a peer support special supervisory agreement.

Section 10. (1) The supervisee shall:

(a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and

(b) Seek consultation from the supervisor, as needed, in addition to a regularly-scheduled supervisory session.

(2) The supervisee shall:

(a) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;

(b) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board, in accordance with the reporting schedule established in Section 6(1) of this administrative regulation; and

(c) Report to the board an apparent violation on the part of the supervisor.

(3) Except as provided in Section 11 of this administrative regulation, a supervisee shall not continue to practice alcohol and drug counseling or peer support services if:

(a) The conditions for supervision set forth in the supervisory agreement are not followed;

(b) There is a death or serious illness of the board-approved supervisor that results in the supervisor not being able to provide supervision; or

(c) The supervisory agreement is terminated by the board, the board-approved supervisor, or the supervisee for any reason other than the extenuating circumstances that allow temporary supervision in Section 11 of this administrative regulation.

Section 11. Temporary Supervision. (1) In extenuating circumstances, if a supervisee is without supervision, the supervisee may continue working up to sixty (60) calendar days under the supervision of a qualified mental health provider as defined by KRS 202A.011(12), a certified alcohol and drug counselor, or a licensed clinical alcohol and drug counselor while an appropriate board-approved supervisor is sought and a new supervisory agreement is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, the termination of the supervisor's employment, or

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termination of the supervisory agreement except for a violation of KRS 309.080 to 309.089, or 201 KAR Chapter 35.

(2)(a) Within ten (10) days of the establishment of the temporary supervisory arrangement, the supervisee shall notify the board of the extenuating circumstances that have caused the supervisee to require temporary supervision.

(b) The supervisee shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the establishment of the temporary supervisory arrangement.

(c) The written plan shall include:

1. The name of the temporary supervisor;
2. Verification of the credential held by the temporary supervisor;
3. An email address and a postal address for the temporary supervisor and the supervisee; and
4. A telephone number for the temporary supervisor.

(3) The temporary supervisory arrangement shall expire after sixty (60) days of the establishment of the temporary supervisory arrangement.

(4) To avoid the expiration of a temporary supervisory arrangement:

(a) A temporary alcohol and drug counselor shall submit a completed KBADC Form 3, Supervisory Agreement; or

(b) A peer support specialist shall submit a completed KBADC Form 6, Peer Support Specialist Supervisory Agreement.

### Section 12. Identification of Provider and Supervisor of Record.

The actual deliverer of a service shall be identified to the client, and the client shall be informed of the deliverer's credential and name of supervisor of record. A billing for a rendered service shall identify which service was performed by the registered alcohol and drug peer support specialist, applicant as a certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or other provider who is supervised by the board approved supervisor of record.

### Section 13. Supervision of a Disciplined Credential Holder. (1)

The board shall appoint an approved supervisor to supervise a disciplined credential holder for the period of time defined by the board and a member of the board to serve as a liaison between the board and the appointed supervisor.

(2) The disciplined credential holder shall be responsible for paying the fee for supervision.

(3) The supervisor shall have completed the board approved training course in supervision.

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined credential holder and the board liaison to:

1. Summarize the actions and concerns of the board;
2. Review the goals and expected outcomes of supervision submitted by the board liaison;
3. Develop a specific plan of supervision approved by the board; and
4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined credential holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to insure that the disciplined credential holder's practice is in compliance with KRS 309.080 to 309.089, and 201 KAR Chapter 35;

(f) Report to the board any apparent violation on the part of the disciplined credential holder;

(g) Immediately report to the board in writing a change in the ability to supervise, or in the ability of the disciplined credential holder to function in the practice of peer recovery support or substance use disorders counseling in a competent manner;

(h) Review and countersign assessments, as needed or

appropriate;

(i) Review and countersign service or treatment plans, as needed or appropriate;

(j) Have direct observation of the disciplined credential holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined credential holder's caseload;

(l) Have knowledge of the therapeutic methods, modalities, or techniques being used by the disciplined credential holder; and

(m) Have knowledge of the disciplined credential holder's physical and emotional well-being if it has a direct bearing on the disciplined credential holder's competence to practice.

(5) The supervisor shall control, direct, or limit the disciplined credential holder's practice to ensure that the disciplined credential holder's practice is competent.

(6) The supervisor shall contact the board liaison with any concern or problem with the disciplined credential holder, his or her practice, or the supervision process.

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined credential holder, and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 14. Graduate Students in Programs Emphasizing Substance Use Disorders Counseling. Graduate-level students in programs that emphasize alcohol and drug counseling who are providing services in health care settings that provide alcohol and drug counseling including independent practice settings shall:

(1) Be supervised by a licensed clinical alcohol and drug counselor or certified alcohol and drug counselor;

(2) Be registered for practicum credit on the transcript in his or her course of study;

(3) Clearly identify their status as unlicensed trainees in the field of alcohol and drug counseling to all clients and payors;

(4) Give to all clients and payors the name of the supervising licensed clinical alcohol and drug counselor or certified alcohol and drug counselor responsible for the student's work; and

(5) Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a certificate or license from the board.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KBADC Form 3, Supervisory Agreement", June 2015;

(b) "KBADC Form 4, ReOquest to Provide Supervision", June 2015;

(c) "KBADC Form 6, Peer Support Specialist Supervisory Agreement", June 2015;

(d) "KBADC Form 7, Supervision Evaluation", June 2015;

(e) "KBADC Form 8, Peer Support Specialist Verification of Supervision", June 2015;

(f) "KBADC Form 9, Supervision Evaluation for Peer Support Specialist", ~~September 2017~~[June 2015];

(g) "KBADC Form 13, Verification of Clinical Supervision", June 2015; and

(h) "KBADC Form 14, Supervision Annual Report", June 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leewood Drive, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2017, at 9:00 a.m. at Department of Professional Licensing, 911 Leewood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their

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intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on November 30, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Walls, Board Administrator, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8814, fax (502) 696-5898, email [Kelly.Walls@ky.gov](mailto:Kelly.Walls@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Brian Judy, phone (502) 696-5630, fax: (502) 564-6801, email [brian.judy@ky.gov](mailto:brian.judy@ky.gov), and Kelly Walls

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to obtain supervision for registration, certification, and licensure.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedure to obtain supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.

(2) If 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 will define the domains that the supervision of a peer support specialist should focus and update the supervision evaluation form for a peer support specialist.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to focus on the domains that a peer support specialist will be tested on and provide the board with the supervisor's performance score for a peer support specialist.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will allow a peer support specialist to be better prepared for the examination and provide the board feedback on the competency of a peer support specialist.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 490 Licensed Clinical Alcohol and Drug Counselors, 7 Licensed Clinical Alcohol and Drug Counselor Associates, 728 Certified Alcohol and Drug Counselors, 711 Temporary Certified Alcohol and Drug Counselors, 89 Temporary Registered Alcohol and Drug Peer Support Specialists, and one 5 Registered Alcohol and Drug Peer Support Specialist.

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

(a) How the amendment will change this existing administrative regulation: The amendments expand the credential holders who

are to be supervised; cap the number of supervisees that a supervisor may supervise; establish reporting requirements; and provides for the supervision of disciplined credential holders and graduate students.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to expand since new credentials have been established in the last legislative session and provide the board with more oversight of the supervision process of an applicant or licensee.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), (3), (5), 309.083, 309.0831, 309.0832, and 309.0833.

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

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

301 KAR 2:075. Wildlife rehabilitation permit.

RELATES TO: KRS 150.015, 150.021, 150.183, 150.195, 50 C.F.R. 17, 21

STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.280

NECESSITY, FUNCTION AND CONFORMITY: KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.280 authorizes the department to promulgate administrative regulations regarding the holding of protected wildlife. This administrative regulation establishes the permitting and operating requirements for wildlife rehabilitators, ~~issuing a permit to a wildlife rehabilitator, maintaining a facility for wildlife rehabilitation, and the operating~~ requirements for wildlife rehabilitators.

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

(2) "Enhanced rabies surveillance area" means Bell, Boyd, Bracken, Carter, Clay, Elliot, Fleming, Floyd, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Lewis, Martin, Mason, McCreary, Pike, Perry, Robertson, and Whitley counties.

(3) "Permit holder" means a wildlife rehabilitation permit holder.

(4) "Rabies vector species" means a:

(a) Coyote (Canis latrans);

(b) Gray fox (Urocyon cinereoargenteus);

(c) Raccoon (Procyon lotor);

(d) Red fox (Vulpes vulpes);

(e) Spotted skunk (Spilogale putorius); or

(f) Striped skunk (Mephitis mephitis).

(5) ~~(3)~~ "Wildlife rehabilitation" means the process of rescuing, raising, and arranging for veterinary medical care of orphaned, sick, displaced, or injured wildlife with the goal of releasing the wildlife back into its natural habitat.

Section 2. Wildlife Rehabilitation Permits. (1) An applicant for a wildlife rehabilitation permit shall:

(a) Be at least eighteen (18) years of age;

(b) Complete an application;

(c) Submit the application to the Director of Wildlife at #1 Sportsman's Lane, Frankfort, Kentucky 40601;

(d) Submit proof of successful completion of the course entitled "Basic Wildlife Rehabilitation" offered by the International Wildlife Rehabilitation Council; and

(e) Submit the annual permit fee as established in 301 KAR 3:022.

(2) An applicant:

(a) May obtain a course-pending status for up to one (1) year upon the issuance of the initial permit; and

(b) Shall submit proof of course completion to the department before the permit shall be renewed.

(3) An applicant's or permit holder's facility shall be inspected by a conservation officer to document compliance with Section 4 of this administrative regulation before a permit is obtained or renewed.

(4) A permit shall be revoked and wildlife confiscated if:

(a) An applicant falsifies information on the application;

(b) The permit holder fails to comply with the provisions of this administrative regulation; or

(c) The permit holder is convicted of a violation of KRS Chapter 150.

(5) An individual whose request for a permit has been denied or whose status has been revoked or suspended may request an administrative hearing pursuant to KRS Chapter 13B.

Section 3. Requirements. (1) A permit holder shall:

(a) Only keep wildlife in a rehabilitation facility for a maximum of 180 days unless specifically exempted by the U.S. Fish and

Wildlife Service; and

(b) Submit to the department a completed Kentucky Department of Fish and Wildlife Resources Wildlife Rehabilitation Annual Report Form.

(2) If an animal is not releasable, as established in subsection (4) of this section, and is held for educational purposes, then the annual report shall document each educational program's:

1. Date;

2. Time; and

3. Location.

(3) A permit holder shall not simultaneously hold captive wildlife under the auspices of a captive wildlife permit as established in 301 KAR 2:081 or 301 KAR 2:083.

(4) A permit holder may retain wildlife for educational purposes if the animal:

(a) Is a mammal with an amputated leg;

(b) Lacks adequate vision to function in the wild;

(c) Lacks locomotive skills necessary for survival in the wild; or

(d) Has another permanent injury that is reasonably expected to inhibit survival in the wild.

(5) An animal retained for educational purposes pursuant to subsection (4) of this section shall be exhibited in an educational program a minimum of six (6) times per year.

(6) Except as allowed pursuant to 50 C.F.R. 17 and 21, a permit holder shall not propagate threatened and endangered wildlife.

(7) A permit holder shall immediately notify the department, in writing, of any federally-threatened or endangered wildlife species delivered, recovered, or retained for rehabilitation.

(8) A permit holder shall not rehabilitate or attempt to rehabilitate any species of terrestrial wildlife not native to Kentucky.

(9) A permit holder shall not rehabilitate or attempt to rehabilitate a:

(a) [A] Cougar (Felis concolor);

(b) [A] Wolf (Canis lupus or Canis rufus);

(c) [A] Elk (Cervus elaphus); or

(d) [A] Bear (Ursus americanus).

(10) A permit holder shall not transport wildlife across state lines for rehabilitation, release, or for any other purpose, unless authorized by the commissioner.

(11) A permit holder shall release rehabilitated wildlife into the appropriate habitat for that species.

(12) A permit holder shall obtain landowner permission before releasing rehabilitated wildlife.

(13) A permit holder shall not keep a cervid in a rehabilitation facility for more than 180 days.

(14) A wild-born cervid held in captivity for rehabilitation purposes shall not be housed in:

(a) The same pen as another captive cervid or housed in direct physical contact with a cervid that originated in captivity; or

(b) A pen that has previously housed cervids that originated in captivity.

(15) A permit holder shall not simultaneously hold a captive cervid permit.

(16) A licensed wildlife rehabilitator shall not:

(a) Accept, obtain, or possess a rabies vector species originating from the enhanced rabies surveillance area; or

(b) Transport a rehabilitated rabies vector species into or out of the enhanced rabies surveillance area.

Section 4. Facilities and Operating Standards. (1) A facility shall comply with Minimum Standards for Wildlife Rehabilitation as adopted by the National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council.

(2) A permit holder shall allow a conservation officer to inspect the facilities at any reasonable time.

(3) The conservation officer shall immediately notify the permit holder and the commissioner if the inspection reveals that the facility is not in compliance with this administrative regulation.

(4) The conservation officer shall make a second inspection after ten (10) days, and the permit shall be revoked and all captive wildlife confiscated immediately if the unsatisfactory conditions have not been corrected.

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Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The National Wildlife Rehabilitator's Association and the International Wildlife Rehabilitation Council publication "Minimum Standards for Wildlife Rehabilitation", third edition, 2000;

(b) "Kentucky Department of Fish and Wildlife Resources Wildlife Rehabilitation Annual Report Form", 2002 edition; and

(c) "Application for Wildlife Rehabilitation Permit", 2006 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

GREGORY K. JOHNSON, Commissioner  
DON PARKINSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 28, 2017 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through November 30, 2017. 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 the requirements for persons rehabilitating wildlife in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide reasonable standards for those who rehabilitate wildlife in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.280 authorizes the department to promulgate administrative regulations regarding holding protected wildlife.

(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 minimum requirements for wildlife rehabilitators in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: These amendments will define rabies vector species, define the enhanced rabies surveillance area, and prohibit rabies vector species from being rehabilitated when obtained from within the enhanced rabies surveillance area. This amendment will also prohibit the transportation of rabies vector species into and out of the enhanced rabies surveillance area for the purposes of rehabilitation or release.

(b) The necessity of the amendment to this administrative regulation: Raccoon-variant rabies was detected in Virginia, approximately 9 miles from the Kentucky border, in May of 2017.

These amendments will further reduce the opportunity for the disease to enter the Commonwealth by placing added restrictions on the handling and transportation of those animals defined as rabies vector species.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 79 wildlife rehabilitation permit holders in Kentucky. This amendment will only affect those rehabilitators who operate within or receive animals from the enhanced rabies surveillance area. Currently, only one rehabilitator operates within this area and eight others currently accept animals from the enhanced rabies surveillance zone. This amendment has the potential to affect nine wildlife rehabilitators.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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: Wildlife rehabilitators will no longer be able to rehabilitate rabies vector species obtained within the enhanced rabies surveillance area. Additionally, rabies vector species will be prohibited from being transported into or out of the enhanced rabies surveillance area.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Wildlife rehabilitators will not incur any costs associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with these amendments will greatly reduce the opportunity for raccoon-variant rabies to enter the state. All Kentuckians will benefit from this preventative measure.

(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. All permit holders are subject to 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 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)(h) and 150.280.

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

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generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional funding for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional funding for state or local government during subsequent 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:

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

**301 KAR 2:081. Transportation and holding of live native wildlife.**

RELATES TO: KRS 150.015, 150.290, 150.305, 150.320, 150.330, 150.360, 150.370, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.180, 150.280, 50 C.F.R. 21.29

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations for the buying, selling, or transporting of wildlife. KRS 150.180 authorizes the department to regulate the buying, selling, or transporting of protected wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. 50 C.F.R. 21.29 establishes the federal standards for holding raptors. This administrative regulation establishes requirements for the buying, selling, holding, and transportation of live native wildlife.

Section 1. Definitions[Definition]. (1)" Enhanced rabies surveillance area" means Bell, Boyd, Bracken, Carter, Clay, Elliot, Fleming, Floyd, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Lewis, Martin, Mason, McCreary, Pike, Perry, Robertson, and Whitley counties.

(2)"Native wildlife" means wildlife species that[which] have historically existed or currently exist in the wild in Kentucky without introduction by man, except for introduced species which have become naturalized.

(3) "Rabies vector species" means a:

(a) Coyote (Canis latrans);

(b) Gray fox (Urocyon cinereoargenteus);

(c) Raccoon (Procyon lotor);

(d) Red fox (Vulpes vulpes);

(e) Spotted skunk (Spilogale putorius); or

(f) Striped skunk (Mephitis mephitis).

Section 2. Taking and Possessing Native Wildlife. (1) A person shall not possess native wildlife that was not legally acquired.

(2) A person shall not participate in[do] any of the activities established in paragraphs (a) through (e) of this subsection[following] with native wildlife obtained from the wild:

(a) Buy;

(b) Sell;

(c) Offer to buy;

(d) Offer to sell; or

(e) Trade or barter.

(3) Except as established[specified] in Section 7 of this administrative regulation and subsections (4) and (5) of this section, a person holding native wildlife in captivity shall apply for and obtain the appropriate[a] permit prior to acquiring wildlife.

(4) Northern bobwhite.

(a) A person may possess 100 or fewer northern bobwhite without a captive wildlife permit, if the:

1. Birds are not propagated or sold; and

2. Person retains and possesses a receipt or proof of purchase.

(b) A person possessing northern bobwhite for dog training areas or a shoot-to-train season shall comply with all applicable requirements of 301 KAR 2:041.

~~(c) Any[Proof of purchase shall be retained as permission to possess.~~

~~(d)]~~ confining facility[facilities] shall comply with Sections 8, 9, 10, and 11 of this administrative regulation.

(5) Amphibians and reptiles.

(a) Five (5) or fewer individuals of each species of native reptile or amphibian may be taken year round or possessed for personal use without a permit, except[. The following shall be exceptions to taking or possessing five (5) individuals of each species.] there shall be:

1. No limit on snapping or softshell turtles;

2. A limit of fifteen (15) bullfrogs per night~~(on bullfrogs);~~ and

3. A limit of twenty-five (25) dusky salamanders or spring lizards of the genus Desmognathus.

(b) There shall be no limit on the number of individuals of each species possessed by a commercial or noncommercial captive wildlife permit holder, if the permit holder does not possess more than five (5) wild-caught individuals of each species of amphibian or reptile.

(c) A captive wildlife permit shall not be required to hold reptiles with a color morphology that is distinctly different from the wild type of the same species of reptile.

(6) A rabies vector species trapped within the enhanced rabies surveillance area shall be euthanized before being moved, except that foxes and coyotes trapped during the trapping season, pursuant to 301 KAR 2:251, may be transferred to a permitted commercial foxhound training enclosure only if the enclosure is located within the county of capture.

(7) A fox or coyote trapped within the enhanced rabies surveillance area during the trapping season may be held for up to forty-eight (48) hours with a valid captive wildlife permit before being transferred to a permitted commercial foxhound training enclosure.

(8) A person shall not transport a rabies vector species into or out of the enhanced rabies surveillance area.

Section 3. Captive Wildlife Permits and Record Keeping. (1) Commercial captive wildlife permit.

(a) A commercial captive wildlife permit shall be required for a person to:

1. Sell;

2. Offer to sell;

3. Trade; or

4. Barter native wildlife.

(b) A commercial captive wildlife permit shall be renewable annually from the date of issue.

(2) Noncommercial captive wildlife permit.

(a) A noncommercial captive wildlife permit shall be required for a person possessing native wildlife, but not selling, offering to sell, trading, or bartering animals.

(b) A noncommercial captive wildlife permit shall be renewable three (3) years from the date of issue.

(3) A captive wildlife permit holder shall maintain accurate records for all captive-bred and wild-captured wildlife and include the [following] information established in paragraphs (a) and (b) of this subsection.[:]

(a) For each captive-bred animal, a person shall:

1. Record the common and scientific name;

2. Keep[The following] evidence of legal acquisition, which shall be a:

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- a. Bill of sale;
- b. Receipted invoice; or
- c. Certificate of origin;
- 3. Record and maintain each animal's date of birth;
- 4. Record and maintain each transaction date related to:
  - a. Sale;
  - b. Purchase;
  - c. Trade;
  - d. Barter; or
  - e. Gifting; and
- 5. Record and maintain~~The following~~ information ~~off[er]~~ the person either receiving or transferring captive wildlife, which shall include the person's:
  - a. Name;
  - b. Address;
  - c. Phone number; and
  - d.~~The person's~~ Captive wildlife permit number.
- (b) For each wild-captured animal, a person shall record and maintain the:
  - 1. Common and scientific name;
  - 2. Date of capture or date when received;
  - 3. Location of capture;
  - 4. Trapping license or hunting license number, if applicable, of the individual obtaining the wildlife; and
  - 5.~~The following~~ Information ~~off[er]~~ the person to whom the animal was given or received, which shall include the person's:
    - a. Name;
    - b. Address;
    - c. Phone number; and
    - d.~~The person's~~ Captive wildlife permit number.
- (4) A captive wildlife permit holder shall:
  - (a) Maintain all records for five (5) years; and
  - (b) Allow records to be inspected by a department representative upon request.

Section 4. Transportation Permits and Certificates~~Certificate~~ of Veterinary Inspection. (1) A person shall apply for and obtain a valid transportation permit or permit authorization number from the department for all shipments of wildlife, native or exotic, unless otherwise exempted by this or another administrative regulation, prior to:

- (a) Receiving a shipment of wildlife;
  - (b) Importing wildlife into Kentucky; or
  - (c) Transporting wildlife into and through the state to a destination outside Kentucky.
- (2) A copy of a valid transportation permit or permit authorization number shall accompany all shipments of wildlife into and through Kentucky.
- (3) An individual transportation permit shall be valid for one (1) shipment of wildlife.
- (4) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue.
- (5) All shipments of wildlife, except for amphibians and reptiles, shall be accompanied by:
- (a) A certificate of veterinary inspection stating that the wildlife is free from symptoms of disease; or
  - (b) A federal quarantine certificate.

Section 5. Applying for Permits. (1) A person shall complete an application for a captive wildlife permit or a transportation permit on a form supplied by the department.

- (2) An applicant for a captive wildlife permit shall only obtain wildlife from one of the legal sources established in paragraphs (a) through (d) of this subsection~~indicate one of the following legal sources for obtaining the wildlife:~~
- (a) A legal purchase or transfer of captive-bred animals from a commercial captive wildlife permit holder;
  - (b) A~~receipt, if it is a~~ gift from a commercial or noncommercial captive wildlife permit holder;
  - (c) Wildlife trapped by the applicant~~Trapping~~ during a legal season for the species with a valid trapping license, if applicable; or
  - (d) A legal out-of-state source if the applicant provides

~~accompanied by~~ a valid transportation permit.

(3) Following permit issuance, the permit holder shall retain records as established~~specified~~ in Section 3(3) and (4) of this administrative regulation.

(4) An applicant shall construct holding facilities that meet or exceed the enclosure specifications established in Sections 8 and 9 of this administrative regulation for each listed species to be acquired before submitting the captive wildlife application.

(5) The department shall deny a captive wildlife or transportation permit to an applicant that:

- (a) Is less than eighteen (18) years of age;
  - (b) Has been convicted within the last year of a violation of:
    - 1. This administrative regulation; or
    - 2. 301 KAR 2:082;
  - (c) Does not submit a completed application; or
  - (d) Does not remit the correct fee pursuant to 301 KAR 3:022.
- (6) The department shall deny a captive wildlife permit to an applicant that:

(a) Has acquired wildlife prior to receiving an approved captive wildlife permit, except as allowed in Sections 2(4) and (5) of this administrative regulation; or

(b) Holds a wildlife rehabilitation permit as established~~specified~~ in 301 KAR 2:075.

(7) An annual transportation permit holder shall notify the department of any amendments to the original application at least forty-eight (48) hours prior to any wildlife shipment by calling the department~~by telephone~~ at 800-858-1549, Monday through Friday, between 8 a.m. and 4:30 p.m. Eastern time.

(8) A person importing and possessing native wildlife shall be responsible for complying with any~~following~~ local ordinance~~ordinances and rules~~ regarding captive wildlife.

Section 6. Prohibited Species. (1) Except as specified in Section 7 of this administrative regulation, a person shall not import, transport, or possess a:

- (a) Alligator snapping turtle (*Macrochelys temminckii*);
- (b) Black bear (*Ursus americanus*);
- (c) Copperbelly water snake (*Nerodia erythrogaster neglecta*);
- (d) Cougar or mountain lion (*Felis concolor*);
- (e) Wild turkey (*Meleagris gallopavo*); or
- (f) Wolf (*Canis lupus*).

(2) The~~following~~ species established in paragraphs (a) through (d) of this subsection shall not be imported into or transported through Kentucky, except as specified in Section 7 of this administrative regulation.~~;~~

- (a) Coyote~~Coyotes~~ (*Canis latrans*);
- (b) Fox~~Foxes~~ (*Vulpes* spp.; *Alopex lagopus*; *Urocyon cinereoargenteus*);
- (c) Raccoon~~Raccoons~~ (*Procyon lotor*); or
- (d) Skunk~~Skunks~~ (*Mephitis* spp.; *Spilogale putorius*; *Conepatus leuconotus*).

Section 7. Exemptions. (1) A facility that is accredited by the American Zoo and Aquarium Association shall:

- (a) Not be required to obtain a transportation permit for native wildlife; and
- (b) Be allowed to import, transport, and possess the prohibited species established~~listed~~ in Section 6(1) and (2) of this administrative regulation.

(2) Upon written request, the department shall grant~~consider~~ an exemption for the importation or possession of the prohibited species listed in Sections 6(1) and (2) for legitimate scientific or educational purposes by the following entities:

- (a) A facility that is designated as the official zoo of a municipality;
- (b) A government agency;
- (c) A college or university; or
- (d) A licensed or accredited institution of:
  - 1. Research; or
  - 2. Education.

Section 8. Confining Facilities. (1) A cage, pen, or other enclosure~~Cages, pens, or other enclosures~~ for confining native wildlife shall be of sufficient structural strength to:

- (a) Prevent the escape of the captive animal~~animals~~;



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- (b) Protect the caged animal from injury and predators; and
- (c) Prevent the entrance of free individuals of the same species.

(2) A wing-clipped and pinioned bird[birds] may be kept in a suitable unroofed enclosure[enclosures] even though wild birds of the same species may enter the enclosure.

(3) A person shall not maintain any native wildlife in captivity in an unsanitary or unsafe condition or in a manner that results in the maltreatment or neglect of that wildlife.

(4) Native wildlife shall not be confined in any cage or enclosure that does not meet the cage specifications in Section 9 of this administrative regulation.

(5) A cage or enclosure[Cages and enclosures] shall be maintained as established in paragraphs (a) through (n) of this subsection[follows]:

(a) Clean drinking water shall be provided daily in clean containers;

(b) Swimming or wading pools shall be cleaned as needed to ensure good water quality;

(c) Any cage or enclosure[Enclosures] shall provide adequate drainage of surface water;

(d) A captive mammal or bird shall be fed daily;

(e) Food shall be:

1. Of a type and quantity that meets the nutritional requirements for the particular species; and

2. Provided in an unspoiled and uncontaminated condition;

(f) Any feeding container[containers] shall be kept clean, and uneaten food shall be removed within a reasonable time;

(g) A shelter shall be provided for security and protection from inclement weather;

(h) Shade or an overhead structure shall be provided in warm seasons;

(i) Fecal and food waste shall be:

1. Removed from cage daily; and

2. Stored or disposed of in a manner that prevents noxious odors or insect pests;

(j) Any cage or enclosure[and enclosures] shall be ventilated to prevent noxious odors;

(k) A hard floor within a cage or enclosure[floors within cages or enclosures] shall be cleaned a minimum of once per week;

(l) A cage or enclosure with a dirt floor[Cages or enclosures with dirt floors] shall be raked a minimum of once every three (3) days with the waste removed;

(m) Animals that are compatible may be held in the same enclosure if the required floor space is provided; and

(n) A common wall[walls] shall be constructed between animals that are not compatible so the animals cannot interact.

Section 9. Minimum Enclosure Sizes and Associated Requirements for Stationary Facilities. (1) Birds.

(a) A northern bobwhite older than fourteen (14) weeks shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.[with the following minimum specifications:]

1. An enclosure for a single northern bobwhite shall be a minimum of 100 square feet.

2. There shall be an increase in one (1) square foot per additional northern bobwhite.

3. A northern bobwhite may be held in smaller breeding pens during the breeding season.

(b) A duck shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.[with the following minimum specifications:]

1. No more than two (2) pairs or one (1) pair and their offspring prior to first molt shall be confined to an area smaller than 100 square feet; and

2. There shall be at least ten (10) square feet of water that is one (1) foot or greater in depth; and

3. There shall be at least two (2)[twenty (20)] square feet of additional land space[and five (5) square feet of water surface] for each additional adult duck.

(c) A goose shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this

paragraph.[with the following minimum specifications:]

1. No more than two (2) pair or one (1) pair and their offspring prior to first molt shall be confined to an area smaller than 500 square feet;

2. There shall be a minimum of fifty (50) square feet of water that is two (2) feet or greater in depth; and

3. There shall be at least 100 square feet of land and twenty-five (25) square feet of water surface for each additional adult goose.

(d) A ruffed grouse shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.[with the following minimum specifications:]

1. There shall be 200 square feet of floor space for five (5) or fewer birds with a height of at least six (6) feet; and

2. There shall be an additional twenty (20) square feet of floor space for each additional bird.

(e) A raptor[Raptors] shall be held in an enclosure meeting the federal falconry standards described in 50 C.F.R. Part 21.29.

(2) Mammals.

(a) A bat shall be held[kept] in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.[with the following minimum specifications:]

1. A little brown bat, long-eared bat, and pipistrelle shall be held[kept] in an enclosure that is at least 6 ft. x 6 ft. x 6 ft.

2. An evening or red bat shall be held[kept] in an enclosure that is at least 8 ft. x 12 ft. x 8 ft.

3. A big brown or hoary bat shall be held[kept] in an enclosure that is at least 10 ft. x 20 ft. x 8 ft.

(b) A fox, bobcat, or raccoon shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.[with the following minimum specifications:]

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft.; and

2. There shall be thirty (30) square feet floor space for each additional animal.

(c) A coyote shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.[with the following minimum specifications:]

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft.; and

2. There shall be twenty-five (25) square feet floor space for each additional animal.

(d) A beaver or otter shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 4. of this paragraph.[with the following minimum specifications:]

1. A single animal enclosure shall be 8 ft. x 12 ft. x 6 ft. with a 4 ft. x 6 ft. pool that is three (3) feet deep at one (1) end;

2. There shall be an increase in horizontal cage size and pool size by eight (8) square feet for each additional animal;

3. An otter shall have a slide and a dry place for sleeping and retreat; and

4. A beaver shall be supplied with gnawing logs and a dry place for sleeping and retreat.

(e) A muskrat or[and] mink shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.[with the following minimum specifications:]

1. A single animal enclosure shall be 6 ft. x 4 ft. x 3 ft. with a 2 ft. x 4 ft. pool which is two (2) feet deep at one (1) end;

2. There shall be an increase in horizontal cage size by eight (8) square feet and a pool size of two (2) square feet; and

3. A muskrat shall have gnawing material.

(f) A gray squirrel, fox squirrel, or flying squirrel shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.[with the following minimum specifications:]

1. A single animal enclosure shall be 4 ft. x 4 ft. x 8 ft.; and

2. There shall be an increase in floor space by two (2) square feet for each additional animal.

(g) A skunk, opossum, rabbit, or woodchuck shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.[with the following minimum specifications:]

1. A single animal enclosure shall be 6 ft. x 8 ft. x 8 ft.;

2. There shall be an increase in floor space by four (4) square feet for each additional animal; and

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3. A woodchuck shall have several gnawing logs approximately six (6) inches in diameter.

(h) A weasel shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph [with the following minimum specifications:]

- 1. A single animal enclosure shall be 3 ft. x 3 ft. x 3 ft.; and
- 2. There shall be an increase in floor space by three (3) square feet for each additional animal.

Section 10. Mobile Facility. A mobile facility used in transporting native wildlife shall meet the [following] requirements established in subsections (1) through (5) of this section.[:]

(1) The mobile facility[.H] shall be equipped to provide fresh air and adequate protection from the elements, without injurious drafts.[:]

(2) The animal housing area shall be free of engine exhaust fumes.[:]

(3) A cage shall be large enough to ensure that each animal has sufficient room to stand erect and lay naturally.[:]

(4) The structural strength of the enclosure shall be sufficient to contain the live animals and to withstand the normal rigors of transportation.[:; and]

(5) Wildlife transported in the same cage area shall be in compatible groups.

Section 11. Temporary Facility. Native wildlife housed in a temporary facility or exhibit shall be housed in a cage that meets the minimum cage specifications provided in Section 8 of this administrative regulation if present in any geographical location for more than ten (10) days.

Section 12. Inspections and Permit Revocation. (1) A permit holder shall allow a conservation officer to inspect the holding facilities at any reasonable time.

(2) A[The] conservation officer[office] shall immediately notify the permit holder if the inspection reveals a violation of any provision of this administrative regulation.

(3) A captive wildlife permit shall be revoked for a period of one (1) year and all captive wildlife confiscated if a violation is not corrected within ten (10) days of the initial inspection.

(4) A fee shall not be refunded for a permit that is revoked.

(5) An individual whose permit has been revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Captive Wildlife Permit Application", 2012 edition;
- (b) "Annual Transportation Permit Application", 2012 edition; and
- (c) "Individual Transportation Permit Application", 2012 edition.

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

GREGORY K. JOHNSON, Commissioner  
DON PARKINSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the

proposed administrative regulation through November 30, 2017. 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 requirements for the buying, selling, holding, and transportation of native wildlife.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a defined process for the holding and transportation of live native wildlife. These processes are necessary to provide for the health and welfare of native wildlife and the safety of Kentucky citizens.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations for the buying, selling, or transporting wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. 50 C.F.R. 21.29 establishes the federal standards for holding raptors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for applying for and receiving permits to buy, sell, hold and transport live native wildlife.

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

(a) How the amendment will change this existing administrative regulation: These amendments will define a rabies vector species, define how rabies vector species shall be handled when trapping within the Enhanced Rabies Surveillance Zone, and prohibit the movement of rabies vector species into and out of the Enhanced Rabies Surveillance Zone.

(b) The necessity of the amendment to this administrative regulation: Raccoon-variant rabies was detected in Virginia, approximately 9 miles from the Kentucky border, in May of 2017. These amendments will further reduce the opportunity for the disease to enter the Commonwealth by placing added restrictions on the handling and transportation of those animals defined as rabies vector species.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above. This amendment falls within the reach of the authorizing statute KRS 150.025 (1)(c).

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 177 people who hold captive wildlife permits. A small portion of these permittees may be affected by this amendment. The department estimates that less than twenty current permit holders will be impacted by the transportation restrictions imposed with this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Legally licensed trappers will no longer be able to trap and hold rabies vector species within the Enhanced Rabies Surveillance Zone except for when transferring them to a permitted foxhound training enclosure within the Zone. Holders of captive wildlife permits for rabies vector species will no longer be able to transport their animal into or out of the Enhanced Rabies Surveillance Zone.

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

**301 KAR 3:120. Commercial nuisance wildlife control.**

RELATES TO: KRS [~~150.105~~] 150.183, 150.275, 150.410  
STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.105, 150.275

NECESSITY, FUNCTION AND CONFORMITY: KRS 150.025(1)(h) authorizes the department to promulgate any other administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150.~~150.275 authorizes the department to issue permits to qualified persons to take and transport wildlife at any time for commercial nuisance wildlife control, and~~ KRS 150.105 authorizes the commissioner, with the approval of the commission, to authorize any person to destroy or bring under control any wild animal, fish, or wild birds, protected or unprotected, which are causing damage to persons, property, or other animals, or spreading diseases. KRS 150.275 authorizes the department to issue permits to qualified persons to take and transport wildlife at any time for commercial nuisance wildlife control~~[permit wildlife causing damage to be destroyed or controlled by any means he deems necessary].~~ This administrative regulation establishes the requirements for commercial nuisance wildlife control~~[Commercial Nuisance Wildlife Control]~~ permits, and nuisance wildlife control operators~~[the conditions under which the permits shall be used].~~

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with these amendments will greatly reduce the opportunity for raccoon-variant rabies to enter the state. State and local governments will shoulder the true cost of rabies control and prevention in the state. All Kentuckians will benefit from this preventative measure.

(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 administrative cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the department on a continuing basis.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all permit holders are treated the 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 Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations for the buying, selling, or transporting of wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. 50 C.F.R 21.29 establishes the federal standards for holding raptors.

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

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

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

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

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

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation:

Section 1. Definitions. (1) "Commercial purposes" means taking nuisance wildlife in exchange for payment, barter or trade.

(2) "Enhanced rabies surveillance area" means Bell, Boyd, Bracken, Carter, Clay, Elliot, Fleming, Floyd, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Lewis, Martin, Mason, McCreary, Pike, Pery, Robertson, and Whitley counties.

(3) "Federally-protected wildlife" means any wildlife species listed by the U.S. Fish and Wildlife Service as threatened or endangered, and any birds protected under the Migratory Bird Treaty Act and the Bald Eagle Protection Act.

~~(4)~~(3) "Nuisance wildlife" means vertebrate wildlife that causes or may cause damage or threat to agriculture, human health or safety, property or natural resources.

~~(5)~~(4) "Nuisance wildlife control operator~~[Wildlife Control Operator]~~" means the holder of a valid permit, issued by the department, which authorizes~~[authorizing]~~ the taking of nuisance wildlife for commercial purposes.

~~(6)~~(5) "NWCO" means a nuisance wildlife control operator~~[Nuisance Wildlife Control Operator]~~ as defined in this administrative regulation.

~~(7)~~(6) "Permit" means the nuisance wildlife control operator's~~[Nuisance Wildlife Control Operator's]~~ permit issued pursuant to this administrative regulation.

(8) "Rabies vector species" means a:

(a) Coyote (Canis latrans);

(b) Gray fox (Urocyon cinereoargenteus);

(c) Raccoon (Procyon lotor);

(d) Red fox (Vulpes vulpes);

(e) Spotted skunk (Spilogale putorius); or

(f) Striped skunk (Mephitis mephitis).

~~(9)~~(7) "Rural area" means an area of the state not included within the boundaries of an incorporated or unincorporated city, village or borough, and having a population in excess of 1,500 inhabitants.

Section 2. NWCO Permit. (1) A person shall apply for a NWCO~~[Nuisance Wildlife Control Operator]~~ permit on a form provided by the department.

(2) The department shall not grant a permit to a person:

(a) Less than eighteen (18) years old;

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(b) Who has been convicted of a violation of KRS Chapter 150 or the administrative regulations promulgated under its authority within one (1) year of the date of application; or

(c) Who fails to achieve a score of seventy (70) percent or better on an examination administered by the department.

(3) Nothing in this subsection shall prohibit persons under eighteen (18) years old from assisting a NWCO.

(4) A person may appeal the denial of a permit for a violation of KRS Chapter 150 or the administrative regulations adopted under its authority by following the procedures established in Section 7 of this administrative regulation.

(5) A NWCO shall have his or her permit in his or her possession at all times when taking or transporting wildlife.

(6) The NWCO permit shall be valid from March 1 through the last day of February.

Section 3. Reporting Requirements. (1) A NWCO~~[An operator]~~ shall file an annual activity report with the department between March 1 and March 30 of each year.

(2) The annual activity report shall be filed:

(a) On a form:

1. Provided by the department, or
2. Photocopied from the department form.

(b) The form shall contain the ~~[following]~~ information regarding the activity for the period from March 1 of the previous year through the last day of February of the current year.

(3) The department shall not renew the permit of an operator who does not:

(a) Submit the annual activity report as required by this section; or

(b) Does not provide the information required by the annual activity report form.

(4) Report documents shall be made available to ~~department~~~~[KDFWR Wildlife and Boating Officers or Division of Wildlife]~~ staff upon request ~~[and reasonable notice]~~.

Section 4. Restrictions on Taking Wildlife. (1) A NWCO shall not:

(a) Take federally-protected wildlife unless ~~the NWCO~~~~[he]~~ has a valid permit issued by the U. S. Fish and Wildlife Service;

(b) Take ~~the~~~~[following]~~ species established in subparagraphs 1. through 5. unless authorized by the commissioner:

1. Copperbelly water snake (*Nerodia erythrogaster neglecta*);
2. ~~White-tailed~~~~[White-tail]~~ deer (*Odocoileus virginianus*);
3. Elk (*Cervus canadensis*);
4. Black bear (*Ursus americanus*); or
5. Wild turkey (*Meleagris gallopavo*); or

(c) Use lethal capture methods to take bats.

(2) A NWCO may take other nuisance wildlife year-round using lethal or nonlethal capture methods, provided ~~the NWCO~~~~[he]~~ has written or oral authorization from the person requesting control.

Section 5. Methods of taking nuisance wildlife. (1) A NWCO using traps shall comply with~~[adhere to the provisions of]~~:

(a) KRS 150.410; and

(b) The trapping requirements in~~[Section 10(2)(b) of]~~ 301 KAR 2:251.

(2) A NWCO using a gun shall provide proof of completion of the Kentucky Hunter Education Program or a course offered by another jurisdiction that meets the course standards set by the International Hunter Education Association.

Section 6. Disposal of captured animals. (1) A NWCO~~[Unless the permit specifies that certain species shall be euthanized, an operator]~~ may euthanize or release captured wildlife, except that a NWCO shall:

(a) Euthanize any rabies vector species captured within the enhanced rabies surveillance area before being moved; and

(b) Shall not transport a rabies vector species into or out of the enhanced rabies surveillance area.

(2) Acceptable methods of euthanizing wildlife shall include:

(a) Captive bolt~~[-, gunshot, drowning (only for animals trapped in water sets), cervical dislocation and thoracic compression (for~~

~~small mammals and birds), and mechanical stunning (stunning shall be followed immediately by a method that ensures death)];~~

(b) Gunshot;

(c) Drowning, for wildlife trapped in water sets, pursuant to 301 KAR 2:251;

(d) Cervical dislocation or thoracic compression for small mammals and birds;

(e) Mechanical stunning, if followed immediately by an acceptable euthanasia method;

(f) Inhalants, including halothane, isoflurane, carbon monoxide, and carbon dioxide;

(g)~~[(e)]~~ Noninhalants including Secobarbital/dibucaine; or~~[and]~~

(h)~~[(4)]~~ Commercially-available agents for striped skunks, in accordance with manufacturer's specifications.

(3) The department may, upon issuing a permit, specify that certain species shall be euthanized.

(a) The requirement that a species be euthanized may apply statewide or to certain geographical regions.

(b) If the requirement that a species be euthanized is made to apply:

1. Statewide, all permits issued in that permit year shall contain the same requirement~~[specification]~~; or

2. To a limited geographical area, all permits issued in that area shall contain the same requirement~~[specification]~~.

(4) A NWCO shall:

(a) Euthanize wildlife that shows obvious symptoms of disease or injury.

(b) Transport wildlife for release in a safe manner that minimizes stress to the animal.

(c) Not release wildlife:

1. Except in a rural habitat suitable for the particular species; and

2. Without the written permission of:

a. The private landowner of at least 100 contiguous acres;

b. The private landowners of contiguous properties totaling at least 100 acres; or

c. The agency responsible for management of public land totaling at least 300 acres; or

(d) Dispose of all wildlife carcasses by:

1. Complete incineration of the entire carcass and all of its parts and products;

2. Placing~~[Disposition of]~~ the carcass in a contained landfill approved pursuant to KRS Chapter 224;

3. Burying the carcass and all its parts and products in the earth;

a. In a location that~~[at a point which]~~ is never covered with the overflow of ponds or streams;

b. and which is Not less than 100 feet~~[distant]~~ from any watercourse, sinkhole, well, spring, public highway, residence, or stable; and

c. [The carcass shall be placed in an opening in the earth] At least one (1) foot deep and covered with one (1) foot of earth; or[-]

4. Removal of the carcass by a duly-licensed rendering establishment; and[-; or

5. Any other proven method of disposal with the prior approval of the department.]

(e) Not hold wildlife for more than forty-eight (48) hours except as otherwise provided by administrative regulations promulgated by the department.

(5) A permitted NWCO wishing to sell the pelts of furbearers taken during the statewide furbearer hunting and trapping season shall also possess a valid trapping license or hunting license, if applicable.

Section 7. Permit revocation, appeal process. (1) The department shall~~[may]~~ revoke without refund the permit of a nuisance wildlife control operator who:

(a) Is convicted of a violation of a federal fish and wildlife law, a Kentucky fish and wildlife law, including KRS Chapter 150 or Title 301 KAR, or another state's fish and wildlife law; or

(b) Knowingly provides false information on:

1. The application for a permit, or

2. The Annual Activity Report.

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(2) An individual whose permit has been revoked shall be ineligible to apply for another Nuisance Wildlife Control Operator Permit or be an assistant on another Nuisance Wildlife Control Operator Permit for a period of three (3) years.

(3) An individual whose permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 8. Items incorporated by reference. (1) The following material is incorporated by reference:

(a) "NWCO Application," edition August 2004; and

(b) "NWCO Annual Activity Report Form," edition August 2004;

(2) The material may be inspected, copied, or obtained subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky, Monday through Friday from 8 a.m. to 4:30 p.m.

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 13, 2017 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 28, 2017 at 11:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through November 30, 2017. 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 the requirements for commercial nuisance wildlife control permits and nuisance wildlife control operators.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide reasonable standards for those who are licensed nuisance wildlife control operators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(h) authorizes the department to promulgate any other administrative regulations reasonably necessary to implement or carry out the purposes of KRS chapter 150. KRS 150.105 authorizes the commissioner, with the approval of the commission, to authorize any person to destroy or bring under control any wild animal, fish, or wild birds, protected or unprotected, which are causing damage to persons, property, or other animals, or spreading diseases. KRS 150.275 authorizes the department to issue permits to qualified persons to take and transport wildlife at any time for commercial nuisance wildlife control.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for commercial nuisance wildlife control permits and nuisance wildlife control operators.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: These amendments will define rabies vector species, define the enhanced rabies surveillance area, and require rabies vector species to be euthanized when captured within the enhanced rabies surveillance area by a nuisance wildlife control operator. This amendment will also prohibit the transportation of rabies vector species into and out of the enhanced rabies surveillance area.

(b) The necessity of the amendment to this administrative regulation: Raccoon-variant rabies was detected in Virginia, approximately 9 miles from the Kentucky border, in May of 2017. These amendments will further reduce the opportunity for the disease to enter the Commonwealth by placing added restrictions on the handling and transportation of those animals defined as rabies vector species.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 134 nuisance wildlife control operators licensed to work in the state of Kentucky. These amendments will only affect those operating within the enhanced rabies surveillance area. Through a recent survey of nuisance wildlife control operators, we estimate that less than ten will be impacted by this regulatory amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Nuisance wildlife control operators will now have to euthanize any rabies vector species they trap or bring under their control within the enhanced rabies surveillance area. Additionally, rabies vector species will be prohibited from being moved into or out of the enhanced rabies surveillance area.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nuisance wildlife control operators will not incur any costs associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with these amendments will greatly reduce the opportunity for raccoon-variant rabies to enter the state. State and local governments will shoulder the true cost of rabies control and prevention in the state. All Kentuckians will benefit from this preventative measure.

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

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

(b) On a continuing basis: There will be no cost to the department on a continuing basis.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established directly or indirectly.

(9) TIERING: Is tiering applied? No. All nuisance wildlife control operators must comply with 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 Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) (h) authorizes the department to promulgate any other administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.105 authorizes the commissioner, with the approval of the commission, to authorize and person to destroy or bring under control any wild animal, fish, or wild birds, protected or unprotected, which are causing damage to persons, property, or other animals, or spreading diseases. KRS 150.275 authorizes the department to issue permits to qualified persons to take and transport wildlife at any time for commercial nuisance wildlife control.

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

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

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

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

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

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

Revenues (+/-): None  
 Expenditures (+/-): None  
 Other Explanation:

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Juvenile Justice**  
**(Amendment)**

**505 KAR 1:130. Department of Juvenile Justice Policies and Procedures: juvenile services in community.**

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 635.100, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, 635.100, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Services in Community", ~~October 6~~<sup>July 12</sup>, 2017, is incorporated by reference and includes the following:

- 600 Definitions (Amended 10/06/17[7/42/47]);
- 601 Initial Contact & Court Support for Public Offenders (Amended 10/06/17[5/45/47]);
- 601.1 Initial Contact & Court Support for Youthful Offenders (Amended 10/06/17[7/42/47]);

- 601.2 Case Management Screens and Assessments (Amended 10/06/17[5/45/47]);
- 602 Individual Client Record (Amended 10/06/17[7/42/47]);
- 603 Service Complaints (Amended 10/06/17[40/45/45]);
- 604 Case Planning and Participation in Treatment Planning (Amended 7/12/17);
- 605 Community Supervision (Amended 10/06/17[5/45/47]);
- 606 Probation of Public Offenders (Amended 10/06/17[5/45/47]);
- 607 Commitment of Public Offenders (Amended 10/06/17[5/45/47]);
- 608 Drug Screening and Confirmation Testing (Amended 10/06/17[7/04/45]);
- 609 Youth's Benefits (Amended 10/06/17[5/45/47]);
- 609.1 Title IV-E Federal Foster Care Maintenance Payments (Amended 10/06/17[5/45/47]);
- 609.2 Trust Funds (Amended 10/06/17[7/04/45]);
- 610 Transportation of Committed Youth (Amended 10/06/17[7/04/45]);
- 610.1 Out-of-State and Out-of-Country Travel (Amended 10/06/17 [5/45/47]);
- 611 Electronic Monitoring (Amended 5/15/17);
- 612 Authorized Leave for Public Offenders, Juvenile Sexual Offenders, and Youthful Offenders in Placement (Amended 10/06/17[40/45/45]);
- 613 Supervised Placement Revocation (Amended 10/06/17[7/04/45]);
- 615 Juvenile Intensive Supervision Team (JIST) (Amended 10/06/17[7/04/45]);
- 616 Youthful Offenders-Confined, Shock Probated, and Transferred to the Department of Corrections (Amended 10/06/17[7/42/47]);
- 616.1 Probation of Youthful Offenders (Amended 10/06/17[5/45/47]);
- 616.2 Parole of Youthful Offenders (Amended 10/06/17[7/04/45]);
- 617 Incident Reports (Amended 10/06/17[7/42/47]);
- 618 AWOL or Escape (Amended 10/06/17[5/45/47]);
- 620 Use of Self-Protection Skills (Amended 10/06/17[40/45/45]);
- 621 Mental or Behavioral Health Services, Referrals, and Psychiatric Hospitalization (Amended 10/06/17[40/45/45]);
- 622 Community Mental Health Operations (Amended 10/06/17[5/45/47]); and
- 623 Health and Safety for Community and Mental Health Services (Amended 10/06/17[7/04/45]).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

CAREY D. COCKERELL, Commissioner

APPROVED BY AGENCY: September 29, 2017

FILED WITH LRC: October 6, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017 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 November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the

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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 15A.065, 15A.0652, 15A.067, 605.150, and 635.095.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation governs every aspect of the program services for the community population of the Department of Juvenile Justice.

(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 and the community population as to their duties, rights, privileges, and responsibilities.

(2) If 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 shall bring the Department of Juvenile Justice in to compliance to reflect actual practice of the agency and compliance regarding the statutory defined process on length of commitment and out of home timeframes.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.0652 (3)(d) 1. and 2.

(c) How the amendment conforms to the content of the authorizing statutes: The policy revisions update the practices or procedures to ensure youth committed or probated to the Department of Juvenile Justice are properly served.

(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 and to comply with the requirements of SB 200 (2014).

(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, 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: By providing and implementing these policies and procedures, the Department of Juvenile Justice will be providing services more effectively and consistently. Policy amendments will ensure that youth are placed and supervised in the least restrictive placement and the out-of-home placement will be no longer then Kentucky Revised Statues allows.

(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: Community staff shall ensure Department committed youth will be placed out of home for the least amount of time needed for treatment, not to exceed Kentucky Revised Statute limitations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Estimated costs to the Department of Juvenile Justice to implement all policy revisions are estimated as follows:

Training Costs: No Additional funding will be required.

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

entities identified in question (3): Youth shall receive services more effectively and efficiently. DJJ employees will better understand the time limitation set by KRS while providing services the youth committed to Department of Juvenile Justice.

(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: Department of Juvenile Justice General Fund and Restricted Funds if necessary.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065, KRS 15A.0652, KRS 15A.067, KRS 15A.160, KRS 15A.210, KRS 15A.305(5), KRS 200.115, KRS 605.150, KRS 635.060, KRS 635.095, KRS 635.100, KRS 640.120, and KRS 645.250.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The revised administrative regulations will only impact the Department of Juvenile Justice. There are no anticipated expenditures for initial staff training or annual training thereafter.

(a) How much 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: The revised administrative regulations will only impact the Department of Juvenile Justice. 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 funding will be required for the first year.

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 (+/-): Expenditures relate to training staff and auditing programs to ensure compliance.

Other Explanation: This regulation will provide a clear and concise policies and procedures for all youth receiving services from the Department of Juvenile Justice, and reflect the treatment and practice of the agency.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
 Kentucky Board of Education  
 Kentucky Department of Education  
 (Amendment)

**704 KAR 3:370. Kentucky Framework for Personnel Evaluation [Professional Growth and Effectiveness System].**

RELATES TO: KRS 156.557, 156.800(7), 161.740

STATUTORY AUTHORITY: KRS 156.070, 156.557(2), (5)(c),

(7) NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.557(2) and (5)(c), and (7) require the Kentucky Board of Education to promulgate administrative regulations to establish a statewide framework [professional growth and effectiveness system] for the purposes of supporting and improving the performance of all certified school personnel, and to develop written guidelines for local school districts to follow in implementing a [statewide] system of evaluation for certified school personnel, and to establish an appeals procedure for certified school personnel. This administrative regulation establishes a statewide framework [professional growth and effectiveness system] to support and improve the performance of all certified school personnel as well as an appeals procedure for certified personnel.

Section 1. Definitions. (1) "Artifact" means a product of a certified school personnel's work that demonstrates knowledge and skills.

(2) "Assistant principal" means a certified school personnel who devotes the majority of employed time in the role of assistant principal, for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR Chapter 3.

(2) [(3)] "Certified administrator" means a certified school personnel, other than principal or assistant principal, who devotes the majority of employed time in a position for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR Chapter 3.

(3) "Certified evaluation plan" means the procedures and forms for evaluation of certified personnel below the level of superintendent developed by an evaluation committee and meeting all requirements of the Kentucky Framework for Personnel Evaluation.

(4) "Certified school personnel" means a certified employee, below the level of superintendent, who devotes the majority of employed time in a position in a district for which certification is required by the Education Professional Standards Board pursuant to Title 16 KAR and includes certified administrators, assistant principals, principals, other professionals, and teachers.

(5) "Conference" means a meeting between the evaluator and the evaluatee for the purposes of providing feedback, analyzing the results of an observation or observations, reviewing other evidence to determine the evaluatee's accomplishments and areas for growth, and leading to the establishment or revision of a professional growth plan.

(6) "Evaluatee" means the certified school personnel who is being evaluated.

(7) "Evaluation committee" means a group, consisting of an equal number of teachers and administrators, who develop personnel evaluation procedures and forms for a local school district as described in KRS 156.557(5)(c)(1).

(8) [(7)] "Evaluator" means the primary evaluator as described in KRS 156.557(5)(c)(2).

(9) "Evaluator certification" means successful completion of certified evaluation training to ensure that certified school personnel who serve as observers of evaluatees demonstrate proficiency in rating teachers and other professionals for the purposes of evaluation and feedback.

(10) [(8)] "Formative evaluation" is defined by KRS 156.557(1)(a). [(9) "Improvement plan" means a plan for improvement of up to twelve (12) months in duration for:

(a) Teachers and other professionals who are rated ineffective in professional practice and have a low overall student growth

rating; and

(b) Principals who are rated ineffective in professional practice and have high, expected, or low overall student growth rating.]

(11) [(40)] "Job category" means a group or class of certified school personnel positions with closely related functions.

(12) "Kentucky Framework for Personnel Evaluation" means the statewide framework a school district uses to develop a local certified personnel evaluation system. [(11) "Local contribution" means a rating based on the degree to which a teacher, other professional, principal, or assistant principal meets student growth goals and is used for the student growth measure.

(12) "Local formative growth measures" is defined by KRS 156.557(1)(b).]

(13) "Observation" means a data collection process conducted by a certified evaluator [observer], in person or through video, for the purpose of evaluation, including notes, professional judgments, and examination of artifacts made during one (1) or more classroom or worksite visits of any duration. [(14) "Observer calibration" means the process of ensuring that certified school personnel have maintained proficiency and accuracy in observing teachers and other professionals for the purposes of evaluation and providing feedback.

(15) "Observer certification" means a process of training and ensuring that certified school personnel who serve as observers of evaluatees have demonstrated proficiency in rating teachers and other professionals for the purposes of evaluation and feedback.]

(14) [(16)] "Other professionals" means certified school personnel, except for teachers, administrators, assistant principals, or principals pursuant to Title 16 KAR. [(17) "Overall student growth rating" means the rating that is calculated for a teacher or other professional evaluatee pursuant to the requirements of Section 7(9) and (10) of this administrative regulation and that is calculated for an assistant principal or principal evaluatee pursuant to the requirements of Section 10(8) of this administrative regulation.]

(15) [(18)] "Peer observation" means observation and documentation by [trained] certified school personnel below the level of principal or assistant principal and trained to perform such observations.

(16) [(19)] "Performance criteria" means the areas, skills, or outcomes on which certified school personnel are evaluated as described in KRS 156.557(4).

(17) "Performance measure" means one (1) of four (4) measures defined in the Kentucky Framework for Personnel Evaluation. Measures include planning, environment, instruction, and professionalism.

(18) [(20)] "Performance rating" means the rating for each performance measure for [summative description of] a teacher, other professional, principal, or assistant principal as determined by the local district certified evaluation plan aligned to the Kentucky Framework for Personnel Evaluation. Ratings include exemplary, accomplished, developing, and ineffective [evaluatee's performance, including the ratings listed in Section 7(8) of this administrative regulation].

(19) "Personnel Evaluation System" or "system" means an evaluation system to support and improve the performance of certified school personnel that meets the requirements of KRS 156.557 and that uses clear and timely formative feedback to guide professional growth.

(20) [(21)] "Principal" means a certified school personnel who devotes the majority of employed time in the role of principal, for which administrative certification is required by the Education Professional Standards Board pursuant to Title 16 KAR. [(22) "Professional growth and effectiveness system" or "system" means an evaluation system to support and improve the performance of certified school personnel that meets the requirements of KRS 156.557(1)(c), (2), and (3) and that uses clear and timely feedback to guide professional development.

(23) "Professional growth plan" means an individualized plan for a certified personnel that is focused on improving professional practice and leadership skills, aligned with performance standards and the specific goals and objectives of the school improvement plan or the district improvement plan, built using a variety of



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sources and types of data that reflect student needs and strengths, evaluatee data, and school and district data, produced in consultation with the evaluator as described in Section 9(1), (2), (3), and (4) and Section 12(1), (2), (3), and (4) of this administrative regulation, and includes:

- (a) Goals for enrichment and development that are established by the evaluatee in consultation with the evaluator;
- (b) Objectives or targets aligned to the goals;
- (c) An action plan for achieving the objectives or targets and a plan for monitoring progress;
- (d) A method for evaluating success; and
- (e) The identification, prioritization, and coordination of presently available school and district resources to accomplish the goals.

(24) "Professional practice" means the demonstration, in the school environment, of the evaluatee's professional knowledge and skill.

(25) "Professional practice rating" means the rating that is calculated for a teacher or other professional evaluatee pursuant to Section 7(8) of this administrative regulation and that is calculated for a principal or assistant principal evaluatee pursuant to the requirements of Section 10(7) of this administrative regulation.

(26) "Self-reflection" means the annual process by which certified school personnel assess the effectiveness and adequacy of their knowledge and performance for the purpose of identifying areas for professional learning and growth.]

(21)[(27)] "Sources of evidence" means the district approved evidences aligned to the performance measure and used by evaluators to inform performance measure ratings[multiple measures] listed in Section 8[KRS 156.557(4) and in Sections 7 and 10] of this administrative regulation. [(28) "State contribution" means the student growth percentiles, as defined in 703 KAR 5:200, Section 1(11), for teachers and other professionals, and the next generation learners goal for principals and assistant principals.

(29) "Student growth" is defined by KRS 156.557(1)(c).

(30) "Student growth goal" means a goal focused on learning, that is specific, appropriate, realistic, and time-bound, that is developed collaboratively and agreed upon by the evaluatee and evaluator, and that uses local formative growth measures.

(31) "Student growth percentile" means each student's rate of change compared to other students with a similar test score history.

(32) "Student voice survey" means the student perception survey provided by the department that is administered annually to a minimum of one (1) district-designated group of students per teacher or other professional evaluatee if the evaluatee directly instructs students throughout the school year, and provides data on specific aspects of the instructional environment and professional practice of the teacher or other professional evaluatee.]

(22)[(33)] "Summative evaluation" is defined by KRS 156.557(1)(d).

(23) "Summative rating" means the overall rating for certified school personnel below the level of superintendent as determined by the district certified evaluation plan aligned to the Kentucky Framework for Personnel Evaluation.

(24)[(34)] "Teacher" means a certified school personnel who has been assigned the responsibility for student learning in a classroom, grade level, subject, or course and holds a teaching certificate under Title 16 KAR. [(35) "Working conditions survey goal" means a school improvement goal set by a principal or assistant principal every two (2) years with the use of data from the department-approved working conditions survey.]

Section 2. District Evaluation Procedures and Forms. (1) An evaluation committee, including teachers as defined in this administrative regulation, shall develop the certified evaluation plan for the evaluation of certified school personnel below the level of superintendent. The evaluation committee shall submit the certified evaluation plan to the local board of education for review and approval.

(2) The local board of education shall review and approve the

certified evaluation plan that meets the requirements of KRS 156.557 (5)(c) and this administrative regulation.

(a) The district certified evaluation plan may require the use of additional trained administrative personnel to observe and provide information to the evaluator.

(b) Peer observations may be used as a source of evidence only if requested by the teacher or other professional and would be used to inform summative ratings.

(c) The district certified evaluation plan shall establish uniform requirements for the length, frequency, and nature of observations conducted by an evaluator for the purpose of evaluation. The district certified evaluation plan shall require a conference between the evaluator and the evaluatee within five (5) working days following each observation.

(d) The district certified evaluation plan shall require the summative evaluation to be held at the end of the evaluation cycle pursuant to KRS 156.557 and to include all applicable system data.

(e) The district certified evaluation plan shall require a summative evaluation to occur annually for each certified personnel below the level of superintendent who has not attained continuing service status pursuant to KRS 161.740 or continuing status pursuant to KRS 156.800(7) and shall incorporate the formative data collected during the Kentucky Teacher Internship Program, pursuant to 16 KAR 7:010, in the summative evaluation of a teacher intern.

(f) The district certified evaluation plan shall require a summative evaluation at least once every three (3) years for a teacher, other professional, principal, or assistant principal who has attained continuing service status pursuant to KRS 161.740 or continuing status pursuant to KRS 156.800(7).

(g) The evaluation criteria and process used to evaluate certified personnel shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year.

(h) The district certified evaluation plan shall require a summative evaluation of certified school personnel to be documented in writing and to be included in the evaluatee's official personnel record.

(i) All evidence used to produce certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.

(j) The district certified evaluation plan shall provide an opportunity for the evaluatee to submit a written statement in response to the summative rating and require the response to be included in the official personnel record. [Implementation Timeline. (1) Beginning with the 2015-2016 school year, all local districts shall fully implement the requirements of KRS 156.557 and this administrative regulation for all certified school personnel except certified school personnel of career and technical education in area technology centers.

(2) Beginning with the 2015-2016 school year, a local school district shall use the results from the system to inform personnel decisions for teachers, principals, and assistant principals.

(3) Beginning with the 2016-2017 school year:

(a) The Office of Career and Technical Education shall fully implement the requirements of KRS 156.557 and this administrative regulation for all certified school personnel of career and technical education in area technology centers.

(b) A local school district shall use the results from the system to inform personnel decisions for other professionals, certified administrators, and teachers in career and technical education in area technology centers.]

Section 3. District Personnel Evaluation Policies[Approval of Local Professional Growth and Effectiveness System Plan and Procedures]. (1) Each local school district shall establish a written policy for implementing the certified evaluation plan for all certified school personnel below the level of superintendent in the district, consistent with the requirements of KRS 156.557 and this administrative regulation. The local board of education shall develop, adopt, and submit to the department for approval a policy and procedure for evaluation of the district superintendent.[submit to the department a professional growth and effectiveness system

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plan and procedures to establish the district's evaluation system for all certified school personnel.

(2) The department shall approve each local school district's plan and procedures that comply with the requirements established in KRS 156.557 and this administrative regulation.]

Section 4. Department Approval of District Personnel Evaluation Plan[Local Professional Growth and Effectiveness Policies]. The department shall review and approve each local school district's certified evaluation plan.[local board of education shall establish a written policy for implementing the system for all certified school personnel in the district, consistent with the requirements of KRS 156.557 and this administrative regulation. The local board of education shall develop, adopt, and submit to the department for approval a policy for evaluation of the district superintendent], consistent with the requirements of KRS 156.557[(6)] and this administrative regulation.

Section 5. Revisions to Previously Approved District Evaluation Plan[Local Evaluation Procedures and Forms]. (1) The local board of education shall review, as needed, the district's certified evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation[A local evaluation committee shall develop, and the local board of education shall review and approve, system procedures and forms for the evaluation of certified school personnel positions].

(2) If a source of evidence is added or removed from the certified evaluation plan or if a decision rule or calculation is changed in the summative rating, the revised certified evaluation plan shall be reviewed and approved by the local board of education. If the local board of education determines the changes do not meet the requirements of KRS 156.557, the certified evaluation plan shall be returned to the certified evaluation committee for revision.[The local board of education shall review and approve procedures and forms that meet the requirements of KRS 156.557(5)(c) and include the requirements established in this subsection.

(a) The district may require the utilization of additional trained administrative personnel to observe and provide information to the evaluator.

(b) The district shall require a minimum of one (1) peer observation of a teacher or other professional evaluatee during the summative evaluation year and sharing the documentation with the teacher or other professional for formative evaluation purposes. Documentation of peer observations may be documented in the department approved technology platform. At the request of a teacher or other professional, peer observations may be used in the summative process.

(c) Beyond the minimum observation requirements set forth in KRS 156.557 and this administrative regulation, the district may establish uniform requirements for the length, frequency, and nature of observations conducted by an evaluator for the purpose of evaluation.

(d) The district shall require a teacher or other professional evaluator to conduct a minimum of three (3) observations of a teacher or other professional evaluatee during the summative evaluation cycle, except that the district may reduce the number of minimum observations of a teacher or other professional evaluatee during the summative evaluation cycle for teacher or other professional evaluatees who do not report for work sixty (60) or more consecutive school days. A district shall include a detailed plan for reduction of minimum observations of teachers or other professional evaluatees who do not report for work sixty (60) or more consecutive school days in the district's system plan and procedures submitted to the department for approval pursuant to Section 3 of this administrative regulation. At a minimum, one (1) full observation shall be conducted during the summative year. Observations may be documented in the department approved technology platform.

(e) The district shall require a principal evaluator to conduct a minimum of two (2) site visits each year.

(f) The district shall create a process for selection of peer observers.

(g) The district shall require a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation by the evaluator.

(h) The district shall require the summative evaluation conference to be held at the end of the summative evaluation cycle and to include all applicable system data.

(i) The district shall require summative evaluation, with multiple observations, to occur annually for each teacher or other professional who has not attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and may utilize the formative data collected during the beginning teacher internship period, pursuant to 16 KAR 7:010, in the summative evaluation of an intern teacher.

(j) The district shall require multiple observations of a certified school personnel who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and whose observation results are determined to be ineffective.

(k) The district shall require summative evaluation at least once every three (3) years for a teacher or other professional who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7).

(l) The district, upon the request of a teacher or other professional, may use peer observation data in the formative process.

(m) The district shall require summative evaluation annually for a certified administrator, assistant principal, or principal. The evaluation criteria and process used to evaluate a certified administrator, assistant principal, or principal shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year.

(n) The district shall require a summative evaluation of a certified school personnel to be documented in writing and to be included in the evaluatee's official personnel record.

(o) The district shall require documentation of a summative evaluation of a teacher, other professional, principal, and assistant principal in the department approved technology platform.

(p) All evidence used to produce a certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.

(q) The district shall provide an opportunity for a written response by the evaluatee and require the response to be included in the official personnel record.]

Section 6. Training and Testing of Evaluators[and Observers].

(1) The district shall include evaluation and observation training in the district's certified evaluation[system] plan[and procedures] submitted to the department for approval pursuant to Section 3 of this administrative regulation.

(2) The district shall ensure an evaluator meets the requirements in[of] the district's evaluation[system] plan[and procedures] prior to conducting a formative or summative evaluation[evaluating a certified school personnel].

(3) An evaluator shall be trained, tested, and approved according to this administrative regulation and the district's certified evaluation plan[on a four (4) year cycle].

(4) Evaluator training shall include[Year one (1) of the district's evaluator training cycle shall include the following training requirements]:

(a) Initial certified evaluation training and testing provided by the Kentucky Department of Education or a provider approved by the department;

(b)[(a)] Training on KRS 156.557 and the requirements of this administrative regulation;

(c)[(b)] Training in[identifying effective teaching and management practices, in] effective observation and conferencing techniques,[in development of student growth goals,] in providing clear and timely feedback, in establishing and assisting with a professional growth plan, and in summative decision techniques;[(c) Training provided by the department for all certified administrator evaluators who have never evaluated certified school personnel. Other certified administrators who have not received training in the skill areas listed in paragraph (b) of this subsection

may also be trained by the department;] and

(d) A minimum of six (6) hours annually of personnel evaluation system training[Training, for all other evaluators, by a provider who has been] approved by the[department as a trainer for the] Effective Instructional Leadership Act[Improvement Program] established in 704 KAR 3:325. [(5) Year one (1) of the district's evaluator training cycle shall include the testing requirements established in this subsection.

(a) An evaluator shall successfully complete testing of research-based and professionally accepted teaching and management practices and effective evaluation techniques.

(b) The testing shall be conducted by the department or an individual or agency approved by the department.

(c) The testing shall include certification as an observer through the department-approved observer certification process for an evaluator who is evaluating teachers or other professionals.

(6) The department shall issue year one (1) approval as an evaluator upon the evaluator's successful completion of the required evaluation training and testing program and successful completion of observer certification.

(7) Years two (2) and three (3) of the district's evaluator training and testing cycle shall include a minimum of six (6) hours in each year and shall include:

(a) Observer calibration training, in the department-approved technology platform, for all evaluators who observe teachers or other professionals for the purpose of evaluation;

(b) Update training on professional growth and effectiveness statutes and administrative regulations; and

(c) Training for evaluators on any changes to the Professional Growth and Effectiveness System and certified evaluation plan, policies, or procedures.

(8) Year four (4) of the district's evaluator training and testing cycle shall include refresher evaluator training and, if evaluating teachers or other professionals, recertification training and testing.

(9) The district shall require peer observers to complete the department-approved peer observer training at least once every three (3) years.

(10) The district shall designate a contact person responsible for monitoring evaluator training and for implementing the system.]]

Section 7. Training of Peer Observers. (1) The district shall require peer observations be performed by individuals who are trained in peer observation techniques and responsibilities prior to the first peer observation.

(2) Peer observation training shall include training in effective observation and conferencing techniques as well as roles and responsibilities.

Section 8. Performance Measure[Professional Practice Rating and Student Growth Rating for Teachers and Other Professionals].

(1) The district's certified evaluation plan[professional practice rating form] shall utilize the Kentucky Framework for Personnel Evaluation[The Framework for Teaching Evaluation Instrument, 2011 Edition, in conjunction with the Teacher and Other Professionals Evaluation Crosswalk,] in compliance with KRS 156.557 and the requirements of this administrative regulation and shall include the following performance measures:

(a) Planning[and Preparation Domain];

(b)[Classroom] Environment[Domain];

(c) Instruction[Domain]; and

(d) Professionalism[Professional Responsibilities Domain].

(2) The district's certified evaluation plan shall define criteria for each performance measure from the Kentucky Framework for Teaching, the Kentucky Framework for Teaching: Specialist Frameworks, and the Principal and Assistant Principal Performance Standards [professional practice rating evaluation form shall list, in each component, the performance criteria] that characterize effective practice and apply to the evaluatee. [(3) The district shall explain and discuss the professional practice rating domains, components, and performance criteria, and the evaluation process with an evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year. Amendments to local systems of

teacher evaluation approved by the department after the end of the evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following school year.

(4) A professional practice rating evaluation form shall be specific to the evaluatee's job category.

(5) The evaluator shall utilize The Framework for Teaching Evaluation Instrument, 2011 Edition, in conjunction with the Teacher and Other Professional Evaluation Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for the evaluatee on each of the four (4) domains.]]

(3)[(6)] The evaluator shall use sources of evidence[from professional growth plans and self-reflection, observation, and student voice surveys,] in combination with professional judgment, to inform the teacher's or other professional's rating on each of the four (4) performance measures[domains] listed in subsection (1) of this section. [(7) The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the teacher's or other professional's professional practice rating.

(8) The evaluator shall utilize the decision rules in this subsection for determining the professional practice rating for a teacher or other professional.]]

(a) The evaluator shall use the following ratings:

1. "Exemplary" shall be the rating for performance that consistently exceeds expectations for effective performance;

2. "Accomplished" shall be the rating for performance that consistently meets expectations for effective performance;

3. "Developing" shall be the rating for performance that inconsistently meets expectations for effective performance; and

4. "Ineffective" shall be the rating for performance that consistently fails to meet expectations for effective performance.

(b) At a minimum, the evaluator shall use the decision rules in this paragraph to determine a professional practice rating.

1. If a teacher or other professional is rated ineffective in the classroom environment domain or in the instruction domain, the teacher's or other professional's professional practice rating shall be not be exemplary or accomplished.

2. If a teacher or other professional is rated ineffective in the classroom environment domain and in the instruction domain, the teacher's or other professional's professional practice rating shall be ineffective.

3. If a teacher or other professional is rated ineffective in any domain, the teacher's or other professional's professional practice rating shall be accomplished, developing, or ineffective.

4. If a teacher or other professional is rated developing in two (2) domains and accomplished in two (2) domains, the teacher's or other professional's professional practice rating shall be accomplished.

5. If a teacher or other professional is rated developing in two (2) domains and exemplary in two (2) domains, the teacher's or other professional's professional practice rating shall be accomplished.

6. If a teacher or other professional is rated accomplished in two (2) domains and exemplary in two (2) domains, the teacher's or other professional's professional practice rating shall be exemplary.

(9) The district shall determine the teacher's or other professional's overall student growth rating as established in this subsection.

(a) The student growth measure shall consist of a state contribution, if available, and a local contribution.

(b) The Kentucky Board of Education shall determine the scale for low, expected, and high growth regarding the state contribution, and the department shall provide the scale to local school districts.

(c) Student growth goals shall be determined as established in this paragraph.

1. The teacher or other professional shall develop and implement a minimum of one (1) student growth goal each year.]]

(b)[2.] Because individual[individualized] education program[plan] (IEP) goals are student-specific, IEP goals may inform, but shall not be used as a single source of evidence for any performance measure[, student growth goals.

3. The district shall ensure that student growth goals and measures of student growth are rigorous and comparable across schools in the local school district.

(d) The local school district shall determine the scale for low, expected, and high student growth goal ratings. In determining the scale, local school districts shall consider the definition of typical yearly growth contained in 703 KAR 5:200, Section 1(12).

(10) The local school district shall develop a process for using professional judgment and the following sources of evidence to determine the overall student growth rating:

(a) Growth trends consisting of the three (3) most recent years of student growth percentile data, if available, for teachers; and

(b) Growth trends consisting of the three (3) most recent years of student growth goal data, if available, for all teachers and other professionals.]

Section 9[8]. Summative Rating of Teachers, Other Professionals, Principals, and Assistant Principals[Overall Performance Category of Teachers or Other Professionals]. (1) The overall performance category for teachers or other professionals, principals, and assistant principals shall be a district determined rating by combining the four (4) performance measures provided in Section 8. [teacher's or other professional's professional practice rating and overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers or Other Professionals.

(2) The district shall determine the teacher's or other professional's overall performance category with the decision rules established in this subsection.

(a) A teacher's or other professional's overall performance rating shall be exemplary if:

1. The professional practice rating is exemplary and the overall student growth rating is high;

2. The professional practice rating is exemplary and the overall student growth rating is expected; or

3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) A teacher's or other professional's overall performance rating shall be accomplished if:

1. The professional practice rating is accomplished and the overall student growth rating is expected; or

2. The professional practice rating is developing and the overall student growth rating is high;

(c) A teacher's or other professional's overall performance category shall be developing if:

1. The professional practice rating is exemplary and the overall student growth rating is low;

2. The professional practice rating is accomplished and the overall student growth rating is low;

3. The professional practice rating is developing and the overall student growth rating is expected;

4. The professional practice rating is developing and the overall student growth rating is low; or

5. The professional practice rating is ineffective and the overall student growth rating is high.

(d) A teacher's or other professional's overall performance category shall be ineffective if:

1. The professional practice rating is ineffective and the overall student growth rating is expected; or

2. The professional practice rating is ineffective and the overall student growth rating is low.]

Section 10[9]. Evaluation of Certified Personnel Assigned to the District Level for Purposes of Evaluation. (1) The district's certified evaluation plan for certified personnel assigned to the district level for purposes of evaluation shall:

(a) Utilize the performance criteria outlined in KRS 156.557(4), in compliance with KRS 156.557 and the requirements of this administrative regulation; and

(b) List the performance criteria applicable to the evaluatee that characterizes professional effectiveness.

(2) The district certified evaluation plan for certified personnel

assigned to the district level for purposes of evaluation shall be specific to the evaluatee's job category.[Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. A teacher or other professional shall be placed on an appropriate plan and summative evaluation cycle based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. (1) A teacher or other professional whose professional practice rating is exemplary or accomplished and who has an expected or high overall student growth rating shall have a professional growth plan that includes: goals set by the teacher or other professional, with evaluator input; activities that are evaluatee directed and implemented with colleagues; a formative review annually; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(2) A teacher or other professional whose professional practice rating is accomplished or exemplary, with a low overall student growth rating, or developing, with a high overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional with evaluator input; if there is a low student growth rating, one (1) goal shall focus on low student growth outcome; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(3) A teacher or other professional whose professional practice rating is developing, with an expected overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional with evaluator input; one (1) goal that addresses professional practice or student growth; activities that are evaluatee directed and implemented with colleagues; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(4) A teacher or other professional whose professional practice rating is developing, with a low overall student growth rating, or whose professional practice rating is ineffective, with an expected or high overall student growth rating, shall have a professional growth plan that includes goals determined by the evaluator: goals shall focus on professional practice and student growth, include an annual formative review, and include a summative evaluation that occurs at the end of one (1) year.

(5) A teacher or other professional whose professional practice rating is ineffective, with a low overall student growth rating, shall have an improvement plan with goals determined by the evaluator: the goals shall focus on low performance areas and a summative evaluation shall occur at the end of the plan, whose duration is determined by the evaluator and may last up to one (1) year.

Section 10. Professional Practice Rating and Overall Student Growth Rating for Principals and Assistant Principals. (1) The district's professional practice rating form shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, and shall include the performance standards and descriptors established in this subsection.

(a) Instructional Leadership Performance Standard. This standard shall be met if the evaluatee fosters the success of all students by facilitating the development, communication, implementation, and evaluation of a shared vision of teaching and learning that leads to student academic growth and school improvement.

(b) School Climate Performance Standard. This standard shall be met if the evaluatee fosters the success of all students by developing, advocating, and sustaining an academically rigorous, positive, and safe school climate.

(c) Human Resources Management Performance Standard. This standard shall be met if the evaluatee fosters effective human resources management by assisting with selection and induction and by supporting, evaluating, and retaining quality instructional and support personnel.

(d) Organizational Management Performance Standard. This

standard shall be met if the evaluatee fosters the success of all students by supporting, managing, and overseeing the school's organization, operation, and use of resources.

(e) Communication and Community Relations Performance Standard. This standard shall be met if the evaluatee fosters the success of all students by communicating and collaborating effectively with stakeholders.

(f) Professionalism Performance Standard. This standard shall be met if the evaluatee fosters the success of all students by demonstrating professional standards and ethics, engaging in continuous professional learning, and contributing to the profession.

(2) The district's professional practice rating evaluation form for assistant principals and principals shall list, in each standard, the performance criteria that characterize professional effectiveness and apply to the evaluatee.

(3) The district shall explain and discuss the professional practice rating standards, indicators, and performance criteria, and the evaluation process to assistant principal and principal evaluatees no later than the end of the evaluatee's first thirty (30) calendar days of the school year. Amendments to local systems of certified personnel evaluation approved by the department after the end of an evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following school year.

(4) The district's professional practice rating evaluation form shall be specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre and post-evaluation conferences.

(5) The evaluator shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for an assistant principal or principal evaluatee on each of the performance standards.

(6) The evaluator shall use evidence from professional growth plans and self-reflection, the department-approved survey of perception of superintendents, district personnel, and teachers on principal practice; and the department-approved working conditions survey goal. The evaluator shall also use evidence from site visits, for principals only. The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the evaluatee's rating on each of the six (6) standards listed in subsection (1) of this section.

(7) At a minimum, the evaluator shall use the decision rules in this subsection to determine a professional practice rating.

(a) If the evaluatee is rated exemplary in at least four (4) of the standards and no standard is rated developing or ineffective, the professional practice rating shall be exemplary.

(b) If the evaluatee is rated accomplished in at least four (4) standards and no standard is rated ineffective, the professional practice rating shall be accomplished.

(c) If the evaluatee is rated developing in at least five (5) standards, the professional practice rating shall be developing.

(d) If the evaluatee is rated ineffective in two (2) or more standards, the professional practice rating shall be ineffective.

(8) The overall student growth rating for principals and assistant principals shall be determined as established in this subsection.

(a) The student growth measure for principals and assistant principals shall consist of a state contribution and a local contribution.

(b) The state contribution for principals and assistant principals shall be based on the degree to which the evaluatee meets the next generation learners goal. A principal's next generation learners goal shall be the assistant principal's next generation learners goal as well. For schools that do not receive state assessment data, principals shall develop two (2) local student growth goals.

(c) The local contribution for the student growth measure for principals and assistant principals shall be a rating based on the degree to which the principal or assistant principal meets student growth goals. Assistant principals shall share the principal's student growth goals.

(d) All principals and assistant principals shall develop and implement a minimum of two (2) student growth goals each year, one (1) of which shall focus on school gap population data.

(e) One (1) goal shall be based on local student growth data.

(f) The district shall ensure that student growth goals are rigorous and comparable across schools in the local district.

(g) The scale for low, expected, and high student growth goal ratings shall be determined by the local school district. In determining the scale, local school districts shall consider the schools goals and measures of success in the comprehensive school improvement plan required in 703 KAR 5:225, Section 9.

(h) The district shall develop a process for using professional judgment and evidence from the following sources of evidence to determine the overall student growth rating:

1. Growth trends over the three (3) most recent years of next generation learners student growth data, calculated pursuant to 703 KAR 5:200; and

2. Growth trends over the three (3) most recent years of student growth goal data.

Section 11. Overall Performance Category of Principals and Assistant Principals. (1) The overall performance category for principals and assistant principals shall be determined by combining the principal or assistant principal's professional practice rating and overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Assistant Principals and Principals.

(2) The district shall determine the overall performance category for principals and assistant principals with the decision rules established in this subsection.

(a) An evaluatee's overall performance category shall be exemplary if:

1. The professional practice rating is exemplary and the overall student growth rating is high;

2. The professional practice rating is exemplary and the overall student growth rating is expected; or

3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) An evaluatee's overall performance category shall be accomplished if:

1. The professional practice rating is accomplished and the overall student growth rating is expected; or

2. The professional practice rating is developing and the overall student growth rating is high.

(c) An evaluatee's overall performance category shall be developing if:

1. The professional practice rating is exemplary and the overall student growth rating is low;

2. The professional practice rating is accomplished and the overall student growth rating is low;

3. The professional practice rating is developing and the overall student growth rating is expected; or

4. The professional practice rating is developing and the overall student growth rating is low.

(d) An evaluatee's overall performance category shall be ineffective if the professional practice rating is ineffective.

Section 12. Professional Growth Plan for Principals and Assistant Principals. The evaluator shall place an assistant principal or principal evaluatee on an appropriate professional growth plan based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan for Assistant Principals and Principals.

(1) An evaluatee whose professional practice rating is exemplary, with an expected to high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(2) An evaluatee whose professional practice rating is accomplished, with an expected to high student overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a

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summative evaluation that occurs at the end of each school year.

(3) An evaluatee whose professional practice rating is developing, with a high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(4) An evaluatee whose professional practice rating is developing, with a low to expected overall student growth rating, shall have, at a minimum, a professional growth plan with goals determined by the evaluator and a summative evaluation at the end of each school year.

(5) An evaluatee whose professional practice rating is ineffective shall have, at a minimum, an improvement plan with the goals determined by the evaluator and a summative evaluation at the end of the plan, as determined by the evaluator, not to exceed one (1) year in duration.

Section 13. Evaluation of Certified Administrators Assigned to the District Level for Purposes of Evaluation. (1) The district's evaluation form for certified administrators assigned to the district level for purposes of evaluation shall:

(a) Utilize the performance criteria outlined in KRS 156.557(4), in compliance with KRS 156.557 and the requirements of this administrative regulation; and

(b) List the performance criteria that characterizes professional effectiveness and apply to the evaluatee.

(2) The district shall explain and discuss performance criteria and the evaluation process to an evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the school year. Amendments to local systems of certified personnel evaluation approved by the department after the end of an evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following year.

(3) The district evaluation form for certified administrators assigned to the district level for purposes of evaluation shall be specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre and post-evaluation conferences.

(4) The evaluator shall use evidence from professional growth plans and self-reflection, one (1) site visit, student growth, and professional judgment to determine the overall performance of certified administrators assigned to the district level for purposes of evaluation.

Section 14. District Evaluation Plan. (1) The local board of education shall review, as needed, the district's evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation.

(2) If a substantive change is made to the district's evaluation plan, the local board of education shall utilize the evaluation committee, described in KRS 156.557(5)(c)1, in formulating the revision. Examples of substantive change shall include changes in the evaluation cycle, observation frequency, forms, or appeal procedures.

(3) The local board of education shall review and approve revisions to the plan and submit the amended plan to the department for approval.

Section 15. Reporting. (1) Districts shall report to the department the percentage of principals, assistant principals, teachers, and other professionals in each professional practice rating category, student growth rating category and overall performance category listed in Sections 7, 8, 10, and 11 of this administrative regulation.

(2) The department shall publicly report, by district, the aggregate number of principals, assistant principals, teachers, including other professionals, in each overall performance category.

Section 16. Monitoring. A district implementing an alternative professional growth and effectiveness plan or system approved by the department pursuant to KRS 156.557(7) shall be monitored within three (3) years of the initial implementation of the alternative

plan, and subsequently at the discretion of the department.]

Section 11[47]. District[Local] Evaluation Appeals Panel. The district shall provide the following in its system plan for an appeal to the district[local] evaluation appeals panel:

(1) A right to a hearing as to every appeal;

(2) An opportunity, five (5) days in advance of the hearing, for the evaluator and evaluatee to adequately review all documents that are to be presented to the district[local] evaluation appeals panel; and

(3) A right to have the evaluatee's chosen representative present at the hearing.

Section 12[48]. State Evaluation Appeals Panel. (1) A certified school personnel who believes that the local district is not properly implementing the district certified evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education.

(2) The appeal procedures shall be as established in this subsection.

(a) The Kentucky Board of Education shall appoint a committee of three (3) state board members to serve on the state evaluation appeals panel (SEAP). The SEAP's jurisdiction shall be limited to procedural matters already addressed by the local appeals panel related to the district's alleged failure to implement an evaluation plan as approved by the department. The SEAP shall not have jurisdiction of a complaint involving the professional judgment conclusion of an evaluation, and the SEAP's review shall be limited to the record of proceedings and documents therein, or lack thereof, at the local district level.

(b) No later than thirty (30) calendar days after the final action or decision at the local district level, a certified school personnel may submit a written request to the chief state school officer for a review before the SEAP. If a certified school personnel does not appeal within the time frame listed in this paragraph, the request shall not be considered. A specific description of the complaint and grounds for appeal shall be submitted with the request.

(c) A brief, written statement or other document that a party wishes to submit for consideration by the SEAP shall be filed with the panel and served on the opposing party at least twenty (20) days prior to the scheduled review.

(d) A decision of the SEAP shall be rendered within fifteen (15) working days after the review.

(e) A determination of district noncompliance with the district[local] evaluation plan or absence of a district local evaluation plan shall render the evaluation void[, and the certified employee shall have the right to be reevaluated].

Section 13[49]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Framework for Teaching", February 2014["The Framework for Teaching Evaluation Instrument, 2011 Edition", May 2014];

(b) "Kentucky Framework for Teaching with Specialist Frameworks for Other Professionals", June 2015["Principal and Assistant Principal Performance Standards", May 2014"]; and

(c) "Principal and Assistant Principal Performance Standards", May 2014["Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers and Other Professionals", April 2015];

(d) "Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Assistant Principals and Principals", May 2014;

(e) "Teacher and Other Professional Evaluation Crosswalk", April 2015;

(f) "Principal and Assistant Principal Performance Standards Crosswalk", May 2014;

(g) "Kentucky Professional Growth Plan and Cycle for Tenured Teachers and Other Professionals", April 2015; and

(h) "Kentucky Professional Growth Plan for Assistant Principals and Principals", July 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of

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Education, Office of Teaching and Learning, 300 Sower Blvd, 5th Floor~~[Office of Next Generation Learners, 18th Floor, Capital Plaza Tower, 500 Mero Street]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, PH.D., Commissioner  
MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 21, 2017, at 10 a.m., 300 Sower Blvd, Room 116, Frankfort, Kentucky. 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. 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:** Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: Amends administrative regulation 704 KAR 3:370 by removing language related to the Professional Growth and Effectiveness System (PGES). The regulation aligns with KRS 156.557, a statute requiring the Kentucky Department of Education (KDE) to develop a statewide framework for teaching that promotes the continuous professional growth and development of skills necessary to become a highly effective teacher or a highly effective administrator in a school or district. Development of the framework occurs in consultation with Kentucky's teacher and principal steering committees and other groups identified by the commissioner of education.

(b) The necessity of this administrative regulation: This regulation amends 704 KAR 3:370 related to district personnel evaluation. The amendment ensures the development of a framework to provide multiple measures for the evaluation process of all certified school district employees below the superintendent level.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.060 and KRS 156.070.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation removes language related to PGES, including timelines, procedures and forms, teacher observer training cycle requirements, student growth ratings for teachers, overall performance category ratings and the professional growth plan.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the state system for personnel evaluation of certified staff below the level of

superintendent and allows district choice for personnel evaluation of certified staff below the level of superintendent within the framework described in the regulation.

(b) The necessity of the amendment to this administrative regulation: Senate Bill 1 (2017) requires the Kentucky Board of Education (KBE) to remove the single state evaluation system and replace it with a personnel evaluation framework to guide districts in development of their own personnel evaluation system.

(c) How the amendment conforms to the content of the authorizing statute: The amendment removes state directives on sources of evidence within the evaluation systems, but provides multiple measures as described in the statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows districts local control of their personnel evaluation systems within the framework as described in this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this amendment are: all local school districts, schools, and certified school district employees below the superintendent level, as they are the intended audience for the Kentucky Framework for Personnel Evaluation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: This amendment changes the system of personnel evaluation for all certified school district employees below the level of superintendent, requiring local districts to establish their own evaluation systems for teachers, principals and other certified staff.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Amendment of this regulation establishes a Kentucky Framework for Personnel Evaluation based upon multiple evaluation measures that are the same for all personnel. Also, the amendment adds language to ensure districts establish their own systems related to the evaluation and rating of teachers, principals, assistant principals and other professionals.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts. N/A

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There will be no change to local district operations or fiscal impact.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.060 and KRS 156.070.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

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

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

(c) How much will it cost to administer this program for the first year? The regulation is being amended and there will be no cost associated with the amendment.

(d) How much will it cost to administer this program for subsequent years? The regulation is being amended and there will be no cost associated with the amendment.

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

Revenues (+/-): N/A  
Expenditures (+/-): N/A  
Other Explanation: N/A

**PUBLIC PROTECTION CABINET  
Department of Alcoholic Beverage Control  
(Amendment)**

**804 KAR 11:010. Equipment and supplies.**

RELATES TO: KRS 244.500, 244.590

STATUTORY AUTHORITY: KRS 241.060(1), 244.590(1)(c), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board[Alcoholic Beverage Control Board] to promulgate administrative regulations regarding matters over which the board has jurisdiction[governing procedures relative to the supervision and control of the use, manufacture, sale, advertising, and trafficking of alcoholic beverages]. KRS 244.590(1)(c) authorizes the malt beverage administrator[of the malt beverage unit] to prescribe by administrative regulation the types of equipment or other things of value a brewer or distributor may furnish to a malt beverage retailer. This administrative regulation establishes the items that a brewer or distributor may furnish to a retail licensee and other licensees.

Section 1. General Prohibition. A brewer or distributor shall not furnish equipment to a retail malt beverage licensee except as authorized by this administrative regulation.

Section 2. Draft Equipment. (1) A brewer or distributor may furnish to a retail licensee that sells [the following equipment to retail licensees that sell] draft malt beverages:

- (a) Tapping accessories;
- (b) Rods;
- (c) Vents;
- (d) Taps;
- (e) Hoses;
- (f) Washers;
- (g) Couplings;
- (h) Vent tongues;
- (i) Check valves; and
- (j) Tap knobs.

(2) A [f] tap knob [knobs], or similar device[device], bearing a brand name may only [names are furnished they shall not] be used to dispense malt beverages of that [a different] brand name [from that designated on the knob. Other equipment shall not be furnished to retail malt beverage licensees].

Section 3. Special Temporary Licensees. (1) A brewer or distributor may furnish vats, tubs, tanks, or portable dispensing units to special temporary licensees, picnics, bazaars, [and] carnivals, and other similar types of events.

(2) The equipment may bear advertising associated with a particular brand that is visible to the consumer.

Section 4. Leased Equipment. A brewer or distributor may lease equipment and supplies to retail licensees in accordance with commercially reasonable terms.

Section 5. Prior Regulation. A brewer or distributor shall not be in violation of KRS 244.590 if the brewer or distributor furnished a refrigerated cooler to a retailer between July 15, 2016 and January 1, 2018 if in conformity with the regulatory requirements then in existence. [Section 2. (1) A brewer or distributor may provide refrigerated coolers to retailers by gift, lease, loan, or sale under the conditions established in this subsection.

(a) A brewer or distributor shall not provide more than one (1) refrigerated cooler to any one (1) retail licensed premises, except that this provision shall not apply to NQ-1 retail licensed premises.

(b) A brewer or distributor shall not provide the refrigerated cooler to the retailer under terms or conditions intended or designed to encourage or induce the retailer to sell or use the products of the providing brewer or distributor to the exclusion of other brewers' or distributors' products.

(c) A brewer or distributor shall not provide the refrigerated cooler to the retailer under terms or conditions intended or designed to:

1. Restrict the retailer's use of the refrigerated cooler to only the products of the providing brewer or distributor to the exclusion of other brewers' or distributors' products; or

2. Require the retailer to place the brewer's or distributor's products in certain locations in the cooler, or prohibit or direct the placement of other brewers' or distributors' products.

(d) A brewer shall not expressly or implicitly require any distributor of its products to provide, deliver, service, or maintain refrigerated coolers provided by the brewer or the distributor, or retaliate against a distributor who refuses to do so. This provision shall not prohibit a distributor's voluntary agreement to do so.

(e) A retailer shall not require or request a brewer or distributor to provide a refrigerated cooler to it as an express or implied condition for the retailer's sale, use, or placement of the brewer's or distributor's products at the retail licensed premises, or retaliate against a brewer or distributor who refuses to do so.

(f) Any refrigerated cooler provided by a brewer or distributor to a retailer shall not:

- 1. Exceed fifteen (15) cubic feet of interior storage space;
- 2. Have tapping or dispensing capabilities or otherwise be capable of use by the retailer in selling draft malt beverages;
- 3. Be constructed in any manner that limits the type of product that may be displayed in the cooler; and
- 4. Leave the retailer's licensed premises.

(g) Any refrigerated cooler provided by a brewer or distributor to a retailer shall have:

- 1. Adjustable temperature controls;
- 2. Adjustable shelving inside the cooler; and
- 3. Capability of storing differing product types and brands without the need to physically modify the unit.

(h) A substantial change shall not be made to a refrigerated cooler that obscures or removes the advertising associated with a particular brand of the providing brewer or distributor such that a reasonable customer cannot readily ascertain the identity of the provider.

(2) Subsection (1) of this section shall only apply to coolers provided on or after January 6, 2017.]

CHRISTINE TROUT, Commissioner,  
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 12, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017 at 10:00 a.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be



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heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2017. 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: Heather Mercadante, Executive Advisor, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email Heather.Mercadante@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Mercadante

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes what equipment, services, and supplies a brewer or distributor may legally furnish to a malt beverage retailer.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 244.590(1)(c) and to codify permissible brewer or distributor practices of furnishing, giving, renting, lending, and selling equipment, fixtures, signs, supplies, money, services, or other things of value to retailers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 244.590(1)(c) requires the promulgation of administrative regulations on permissible brewer and distributor practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies permissible brewer or distributor practices.

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

(a) How the amendment will change this existing administrative regulation: With this amendment, brewers and distributors will no longer be permitted to furnish refrigerated coolers to retailers as was permitted under prior regulations. The amendment codifies the Department's prior interpretation, which allowed a brewer or distributor to lease equipment and supplies to retailers under commercially reasonable terms.

(b) The necessity of the amendment to this administrative regulation: This regulation amendment is necessary due to amendments to KRS 244.590(2) by House Bill 183. As amended, KRS 244.590(2) will prohibit brewers and distributors from giving refrigerated coolers to a retailer.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 244.590(1)(c) authorizes the promulgation of administrative regulations on this subject, and KRS 244.590(2), as amended, prohibits the giving of refrigerated coolers by a brewer or distributor to a malt beverage retailer.

(d) How the amendment will assist in the effective administration of the statutes: This regulation amendment is necessary to avoid conflict between KRS 244.590 and the regulation now in effect.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 6,900 brewers, distributors, and malt beverage retailers will be affected by this administrative regulation. The Department of Alcoholic Beverage Control will also be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Brewers and distributors will no longer be able to furnish refrigerated coolers to malt beverage retailers unless the refrigerated cooler is leased under commercially reasonable terms. Malt beverage retailers will now be required to enter into commercially reasonable leases with brewers and distributors to

lawfully possess a brewer's or distributor's refrigerated cooler. The Department of Alcoholic Beverage Control will be responsible for enforcing 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 cost for the Department associated with complying with this administrative regulation amendment. Licensees are not required to incur costs by this amendment since leasing equipment is discretionary, not mandatory.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no financial benefits to the entities resulting from this administrative regulation amendment.

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

(a) Initially: There are no costs to implement this administrative regulation amendment.

(b) On a continuing basis: There are no continuing costs to implement this administrative regulation amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with implementing this administrative regulation, and enforcement costs, if any, will be minimal and will be absorbed into regular employee duties.

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control is the only government agency expected to be impacted by this administrative regulation amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 244.590(1)(c) authorizes the promulgation of administrative regulations on this subject.

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this administrative regulation amendment for each subsequent year.

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: There are no expected costs to administer this administrative regulation amendment.

**PUBLIC PROTECTION CABINET**  
**Kentucky Department of Insurance**  
**(Amendment)**

**806 KAR 39:030. Kentucky No-Fault Rejection Form.**

RELATES TO: KRS 304.39-060

STATUTORY AUTHORITY: KRS 304.2-110, 304.39-300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the commissioner of the Department~~Executive Director~~ of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.39-060 requires the Department~~Office~~ of Insurance to prescribe a form whereby any person may reject limitations on his or her tort rights and liabilities. This administrative regulation establishes the Kentucky No-Fault Rejection Form~~"Kentucky No-fault Rejection Form"~~ and provides for its electronic submission ~~[its use]~~.

Section 1. Rejection. Any person may refuse to consent to the limitation of his or her tort rights and liabilities by filing with the Department~~Office~~ of Insurance a Kentucky No-Fault Rejection Form ~~"Kentucky No-fault Rejection Form"~~. The "Kentucky No-fault Rejection Form" shall contain an advisory providing information ~~as to no-fault benefits and the effects of rejection, so each person may make an informed decision as to rejecting no-fault benefits.~~

Section 2. Submitting the Kentucky No-Fault Rejection Form.

(1) Members of the same household may indicate~~their~~ rejections on the same form, but each household member~~individual~~ shall execute the form on his or her own behalf unless~~he is~~ under legal disability. The policyholder shall:

(a) Mail~~send~~ the original and one (1) copy of the form to the Department~~Office~~ of Insurance; or

(b) Submit the form electronically using the online version of the "Kentucky No-Fault Rejection Form," available on the Department Web site.

(2) Upon receipt of the properly completed form~~forms~~, the Department~~Office of Insurance~~ shall provide the policyholder a file-stamped electronic or hard copy for his or her records~~stamp the copy with the date filed and return it to the policyholder for his or her records~~.

(3) A rejection is effective upon the date of filing with the Department~~of Insurance~~ and remains effective unless~~revoked by~~ submission of revocation of the rejection on the form made a part of this administrative regulation, or is superseded by the filing of a subsequent rejection form.

(4) A rejection may be revoked by submitting a Kentucky No-Fault Rejection Form and selecting the revocation option.

Section 3. Legal Disability. Where a guardian or conservator ~~[committee]~~ has been appointed for a person under a legal disability, ~~in order to reject,~~ the guardian or conservator~~[committee]~~ shall execute the rejection form on behalf of the person~~ward~~. ~~[A rejection for a minor under eighteen (18) years of age must be executed by a parent, if there is no guardian or committee.]~~ A rejection executed by a parent, guardian, or conservator~~parent or guardian~~ is valid only so long as the individual is under legal disability.

Section 4. Notice to insurer. Each policyholder or insured~~[of an automobile liability insurance policy]~~ submitting the Kentucky No-Fault Rejection Form shall send to his insurance company a copy of any rejection form filed with the Department~~Office~~ of Insurance, ~~involving any member of his household who is not a policyholder~~.

Section 5. Incorporation by Reference. (1) NF-1(a)(b)(c) P and C, "Kentucky No-Fault Rejection Form" (09/17)~~(09/09)~~, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department~~Office~~ of Insurance, 215 West Main Street, Frankfort,

Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department~~Office~~ of Insurance Web site: <http://insurance.ky.gov>. ~~[http://doi.ppr.ky.gov/kentucky/]~~

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2017 at 9:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by November 15, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted on or before 11:59 p.m. on November 30, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email [Patrick.oconnor@ky.gov](mailto:Patrick.oconnor@ky.gov)

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation amends 806 KAR 39:030 to update the Kentucky No-Fault Rejection Form incorporating legislative changes to the minimum liability coverage amounts, and provides the Department with regulatory authority to utilize electronic submission of the No-Fault Rejection Form.

(b) The necessity of this administrative regulation: This administrative regulation amends an existing regulation to update the Kentucky No-Fault Rejection Form required to reject limitations on a person's tort rights and liabilities. This form must be updated to bring it into compliance with amendments to KRS 304.39-110, which raises minimum property damage insurance coverage requirements from \$10,000 to \$25,000. The amendment also provides for electronic submission of the No-Fault Rejection Form. Currently, the forms are submitted in hard copies. The process is time consuming, burdensome on policyholders and the Department, and unnecessarily consumes Department resources to log, file, stamp, and return file-stamped copies to policyholders. The Department spends over \$10,000 annually on postage and envelopes for the return of file stamped copies and additional resources in administrative time. Electronic submission will allow for a more efficient delivery and receipt of completed forms through the Department's website.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.39-060(4) requires any person rejecting limits on tort rights and liabilities to complete a form "in writing or electronically" as prescribed by the Department of Insurance. Thus, the Department has authority to utilize electronic submission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation updates the Kentucky No Fault Rejection Form to comply with recent statutory amendments to KRS 304.39-110. The updated form will correctly inform individuals of the

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minimum property damage liability insurance coverage requirements and the potential rights being rejected. Also, this administrative regulation will allow policyholders to electronically submit a Kentucky No-Fault Rejection Form through the Department of Insurance website.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update the Kentucky No-Fault Rejection Form to bring it into compliance with the amendments to KRS 304.39-110, enacted by the 2017 General Assembly and signed by the Governor. This amendment will also allow for the electronic delivery and submission of the form.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as the current form now incorrectly lists the minimum coverage limits and does not accurately reflect recent statutory changes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will accurately reflect that KRS 304.39-110 was amended to raise the minimum property damage liability coverage limit for automobile insurance from \$10,000 to \$25,000. It also provides for the electronic submission of the Kentucky No-Fault Rejection Form as permitted by KRS 304.39-060.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the Kentucky No-Fault Rejection Form to be updated to accurately reflect the change in minimum property damage liability coverage limit for automobile insurance from \$10,000 to \$25,000, and also will allow for a more efficient delivery and receipt of completed forms via electronic means through the Department of Insurance website.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended regulation will assist any policyholder in following the proper, legal procedure for rejecting limitations on tort rights and liabilities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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 be required to take any action as a result of this amended regulation; the existing form will be updated to reflect the current state of the law and a system of online, electronic submission of the form will be made available. This is in addition to the traditional, existing method involving hardcopies and Regular U.S. Mail.

(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 comply with this amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals wishing to reject limitations on tort rights and liabilities will be able to do so in a faster, more efficient manner by utilizing the new online system provided through the Department of Insurance website.

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

(a) Initially: The Department estimates an annual cost of \$1,000 for the data housing.

(b) On a continuing basis: The Department estimates an annual cost of \$1,000 for the data housing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The data housing will be paid from the Department's current budget, and additional funds are available from the \$5 fee charged to insurance companies requesting verification of no-fault rejection status for their insureds. This \$5 fee generates approximately \$1,000 per year.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply equally to all policyholders and persons who register, operate, maintain or use a motor vehicle on the public roadways of the Commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, KRS 304.39-060, and KRS 304.39-300.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department intends to utilize an existing electronic platform designed to handle electronic form submission. The data storage will cost approximately \$1,000 annually. The costs will be offset by the Department's anticipated savings on mailing costs and administrative costs of receiving, logging, and replying to individuals, which currently costs the Department over \$10,000 annually. The costs will also be offset by the revenue generated by the \$5 fee the Department charges to respond to no-fault verification requests by insurers.

(d) How much will it cost to administer this program for subsequent years? The Department anticipates the cost of the program will remain steady each year to compensate for the data housing.

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

Revenues (+/-): Not applicable

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

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

921 KAR 2:040. Procedures for determining initial and continuing eligibility.

RELATES TO: KRS 205.010, 205.200, 205.245, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate 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

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administration of the cabinet and its programs. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the Kentucky Transitional Assistance Program (K-TAP) and the State Supplementation Program (SSP). KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with Title IV-A of the Social Security Act, 42 U.S.C. 601-619, and federal regulations. This administrative regulation establishes the procedures used to determine initial and continuing eligibility for assistance under these programs.

Section 1. Eligibility Determination Process. (1) A household shall, for the month payment is intended to cover the household, meet the eligibility criteria in:

- (a) 921 KAR 2:006 and 921 KAR 2:016 for K-TAP; or
- (b) 921 KAR 2:015 for SSP.

(2) A household shall not receive assistance until approval of the application for benefits.

(3) Each decision regarding eligibility for assistance shall be supported by facts recorded in the applicant's or recipient's case record.

(4) The applicant or recipient shall be the primary source of information and shall be required to:

- (a) Furnish verification of:
  1. Income;
  2. Resources; and
  3. Technical eligibility; and

(b) Give written consent to contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(5) If informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information when requested shall be considered a failure to present adequate proof of eligibility.

(6)(a) An application shall be considered filed if a PA-77, Intent to Apply for ~~Medicaid and/or~~ K-TAP ~~[(Cash Assistance)], Medicaid, State Supplementation, or Child Care Assistance, or a PA-100, Application/Recertification for K-TAP and~~ Kinship Care ~~[- and Family/AFDC Related MA]~~, containing the name, address, and signature of the applicant is received by ~~an~~ a DCBS office of the Department for Community Based Services (DCBS).

(b) An application shall be processed after the:

1. Applicant or representative is interviewed;
2. Required information and verification for the application is provided to the ~~Department for Community Based Services~~ {DCBS} office; and
3. Application and related documents, pursuant to subsection (4) of this section, are received by the DCBS office.

(c) If an electronic form is not used, the cabinet shall record information for recertification to determine continuing eligibility for K-TAP by using form PA-100.

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting, within ten (10) calendar days, any change in circumstances ~~that~~ ~~which~~ may affect eligibility or the amount of payment.

(2) Eligibility shall be redetermined:

(a) If a report is received or information is obtained about a ~~change~~ ~~changes~~ in a ~~circumstance~~ ~~circumstances~~;

(b) Every ~~twelve (12)~~ ~~twenty-four (24)~~ months for SSP cases; and

(c) Every twelve (12) months for K-TAP cases.

Section 3. Child Care Assistance Program. Procedures used to determine initial and continued eligibility for the Child Care Assistance Program shall be in accordance with 922 KAR 2:160.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "PA-77, Intent to Apply for ~~Medicaid and/or~~ K-TAP, ~~Medicaid, State Supplementation, or Child Care Assistance~~ ~~[(Cash Assistance)]~~", 10/17/14/14; and

(b) "PA-100, Application/Recertification for K-TAP ~~and~~;

Kinship Care ~~[- and Family/AFDC Related MA]~~", 10/17/14/14.

(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.

ADRIA JOHNSON, Commissioner  
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 19, 2017

FILED WITH LRC: September 29, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov.; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used to determine initial and continuing eligibility for assistance under the Kentucky Transitional Assistance Program (K-TAP) and State Supplementation Program (SSP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish eligibility procedures for assistance under K-TAP and SSP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of eligibility procedures for assistance under K-TAP and SSP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing K-TAP and SSP eligibility procedures.

(2) If 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 updates incorporated materials, changes the eligibility certification period for SSP from twenty-four (24) to twelve (12) months, and adds a clarifying cross-reference to the administrative regulation governing the Child Care Assistance Program. In addition, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to support the integration of multiple public assistance programs on behalf with the Child Care Assistance Program effective October 1, 2017. The amendment is also necessary to better align the eligibility certification period for SSP with other public assistance programs.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of

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the authorizing statutes through its refinement of eligibility procedures to improve qualified households access to an improved array of public assistance programs supporting work and the households' overall welfare. In addition, the administrative regulation enhances program integrity, supports conformity with federal requirements, and preserves the state's federal funding awards for public assistance programming.

(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 alignment with programmatic improvements to the eligibility procedures of the department improving access to qualified households, agency efficiencies, and programs' integrity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: At the end of June 2017, there were 17,344 families including 31,019 children receiving K-TAP, and there were 2,309 individuals receiving SSP.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new or additional action required on the part of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new or additional cost borne by the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the efficiencies of an integrated eligibility and enrollment system for multiple public assistance programs. The integrated system will assure that regulated entities have improved access to the programs for which they qualify and experience improved accuracies in the eligibility determination process reducing the possibility for fraud, error, or claim.

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

(a) Initially: The enhancement of the eligibility and enrollment system will be made within existing appropriations. This administrative regulation will support programmatic improvements to help the agency comply with federal requirements and avoid federal corrective action or penalty.

(b) On a continuing basis: There is no new or additional ongoing costs anticipated as a result of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is supported through the Temporary Assistance for Needy Families Block Grant (TANF), state maintenance of effort, and General Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation will require 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. 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. 601-619
2. State compliance standards. KRS 194A.050(1), 205.200(2)
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619

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 is 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), 205.200(2), 42 U.S.C. 601-619

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for 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 generate no revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is not projected to impose new or additional costs.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is not projected to impose new or additional costs.

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

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

#### 921 KAR 3:045. Issuance procedures.

RELATES TO: 7 C.F.R. 274.2, 274.4, 274.5, 274.6  
STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, 274.1

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. KRS 194A.050(1) requires the secretary to promulgate 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 it's programs. The cabinet shall follow procedures established in 7 C.F.R. 274.1 in the operation of an electronic benefit transfer or "EBT" system. This administrative regulation establishes issuance procedures used by the cabinet in the administration of SNAP.

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Section 1. Basic Issuance Requirements. (1) The cabinet shall be responsible for the timely and accurate issuance of benefits to eligible households.

(2) In issuing benefits, the cabinet shall insure that:

(a) Only certified households receive benefits;

(b) Program benefits shall be distributed in the correct amounts; and

(c) Benefit issuance and reconciliation activities shall be properly conducted and accurately reported to the Food and Nutrition Service (FNS).

(3) The cabinet shall advise the recipient at time of application that:

(a) ~~Unused~~~~After twelve (12) months of EBT account inactivity, unused~~ benefits shall be expunged in accordance with Section 6 of this administrative regulation; and

(b) Expunged benefits shall be:

1. Applied for benefit overpayments in accordance with 921 KAR 3:050; or

2. Returned to the FNS of the U.S. Department of Agriculture.

(4) The cabinet shall maintain issuance records for a period of three (3) years from the month of origin.

Section 2. Benefit Delivery. (1) Benefits shall be provided to an eligible household through an EBT system.

(2) An EBT card and instructions for use shall be mailed:

(a) Directly to each eligible household; or

(b) To the local office for pick up, if requested by the household.

Section 3. Benefit Availability. (1) Benefits shall be available to a household the day after an approval is processed, if the case is a:

(a) New application;

(b) Reapplication; or

(c) Recertification that is:

1. Initiated after the 15th day of the month; and

2. Approved during the benefit month.

(2) An ongoing case shall have benefits credited to the EBT account and available to the household within the first nineteen (19) days of the benefit month.

Section 4. EBT Card Replacement. (1) The cabinet shall provide a replacement EBT card to a household within five (5) days, if the EBT card is reported:

(a) Lost;

(b) Stolen; or

(c) Damaged.

(2) An EBT card shall be deactivated if a household reports the need for card replacement.

Section 5. Benefit Replacement. (1) After the household receives an EBT card, if the EBT card is lost or stolen and the EBT account is reduced, the cabinet shall not provide replacement benefits.

(2) If food purchased with SNAP benefits is destroyed in a household misfortune, the cabinet shall provide replacement benefits if:

(a) The loss is reported:

1. Orally or in writing; and

2. Within ten (10) days of the household misfortune; and

(b) A household member or authorized representative signs a statement attesting to the loss.

(3) If the household is eligible for replacement benefits, the replacement shall equal:

(a) The amount of the loss to the household, not to exceed the maximum of one (1) month's benefits for the household requesting replacement; or

(b) Up to the full value of the benefits, if the replacement includes restored benefits.

(4) The cabinet shall not provide a replacement due to a household misfortune if:

(a) A disaster declaration has been issued by FNS; and

(b) The household is eligible for disaster SNAP benefits.

(5) There shall not be a limit on the number of benefit replacements for food:

(a) Purchased with SNAP benefits; and

(b) Destroyed in a household misfortune.

(6) If available documentation indicates that a household's request for benefit replacement appears fraudulent, the cabinet shall:

(a) 1. Deny the replacement; or

2. Delay the replacement; and

(b) Inform the household:

1. Of its right to a fair hearing to contest the denial or delay of a replacement; and

2. That a replacement shall not be made while the denial or delay is being appealed.

Section 6. Account Inactivity. (1) If an EBT account has not been debited in twelve (12) consecutive months, the cabinet shall:

(a) Expunge a monthly benefit on a monthly basis as each individual benefit month reaches a date that is twelve (12) months in the past; and

(b) Notify the household in writing:

1. That the household's EBT account has not been debited in the last twelve (12) months; and

2. Of the amount of SNAP benefits that have been expunged.

(2) If a recipient debits the EBT account, the expungement process shall cease.

(3) When the cabinet receives an official death notice or confirms a death match from an official source for a SNAP single-person household, the cabinet shall expunge the remaining benefit amount in accordance with correspondence from the United States Department of Agriculture dated August 23, 2017.

(4) [(3)] Expunged benefits shall not be retrieved.

Section 7. Incorporation by Reference. (1) The "Correspondence from United States Department of Agriculture dated August 23, 2017", 8/23/2017, is incorporated by reference.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 3, 2017

FILED WITH LRC: October 4, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes issuance procedures for the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform

standards for the issuance of SNAP benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of SNAP issuance procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the requirements for SNAP issuance in accordance with 7 C.F.R. 274.2(h)(2) and federal waiver through the U.S. Department of Agriculture.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation benefit expungement process to expunge remaining SNAP benefits of a single-person household when official notice of death has been received, or a death match of such a household has been confirmed from an official source in accordance with 7 C.F.R. 272.14 and federally approved waiver. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to expunge benefits for a deceased single-person household upon official notice of death. Current process is a month-to-month expungement after benefits become stale, twelve (12) months after issuance. The current process requires multiple notices to the deceased person and would allow anyone with access to the deceased person's EBT card to access remaining SNAP benefits. Surviving family members regularly contact DCBS about said notices and often indicate that the notices compound grief and distress. This amendment will allow benefit expungement to occur at once preventing benefits from lingering on the recipient's cards and multiple notifications being sent to deceased recipients.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes and federal waiver through modification of the benefit expungement procedures.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of statutes through conformity with 7 C.F.R. 274.2(h)(2) and federal waiver.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects SNAP single person households. During August 2015 through July 2016, there were 2,229 SNAP single-person households closed due to death with SNAP benefits remaining at the time of closure.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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 to this administrative regulation will not require a new action on the part of affected entities.

(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 the administrative regulation will not create a cost to SNAP recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will allow the administering agency to avoid costs associated with multiple notices and surviving family members to avoid stress associated with said notices pertaining to their deceased family member. In addition, the amendment will better ensure a deceased single-person's household's remaining SNAP benefits are not accessed by a person otherwise unauthorized to use said benefits, improving program integrity and stewardship of federally funded SNAP benefits.

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

(a) Initially: The amendment to this administrative regulation will require an initial set-up fee charged by the EBT vendor, Fidelity Information Services (FIS). DCBS is currently in discussion with FIS regarding the initial costs, though the costs are not projected to be substantial and would be absorbed within existing appropriations. These upfront costs may ultimately be offset by cost avoidance in the administration of SNAP, such as reduced number of notices and staff time.

(b) On a continuing basis: Any ongoing fee charged by the state's EBT vendor will be absorbed within existing appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no increases in fees or funding required with 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 fees, nor directly or indirectly increases 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. 7 C.F.R. 271.4, 274.1, 274.2(h)(2), and federal waiver #2170026

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

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 274.1, 274.2(h)(2), and federal waiver #2170026

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is 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), 7 C.F.R. 271.4, 274.1, 274.2(h)(2), and waiver #2170026

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? SNAP does not directly generate any revenue.

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will require an initial set-up fee charged by the EBT vendor, Fidelity Information Services (FIS). DCBS is currently in discussion with FIS regarding the initial costs, though the costs are not projected to be substantial and would be absorbed within existing appropriations. These upfront costs may ultimately be offset by cost avoidance in the administration of SNAP, such as reduced number of notices and staff time.

(d) How much will it cost to administer this program for subsequent years? Any ongoing costs would be absorbed within existing appropriations.

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

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

**921 KAR 3:090. Simplified assistance for the elderly program or "SAFE".**

RELATES TO: 7 C.F.R. 273.1, 273.2, 273.9, 273.10, 273.12, 273.14

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4 NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate 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. 7 C.F.R. 271.4 delegates the administration of the Supplemental Nutrition Assistance Program (SNAP) to the state agency. This administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program (SAFE), a demonstration project administered by the cabinet to improve access to SNAP for elderly and disabled individuals.

Section 1. Definitions. (1) "Regular SNAP benefits" means SNAP benefits received in accordance with the procedures specified in:

- (a) 921 KAR 3:020, Financial Requirements;
- (b) 921 KAR 3:025, Technical Requirements;
- (c) 921 KAR 3:030, Application Process; and
- (d) 921 KAR 3:035, Certification Process.

(2) "Shelter costs" means monthly rent or mortgage expenses as stated by the applicant.

(3) "Simplified Assistance for the Elderly" or "SAFE" means an optional SNAP program for SSI participants who are age sixty (60) or older.

(4) "State Data Exchange" or "SDX" means files administered by the Social Security Administration that provide states with eligibility and demographic data relating to SSI applicants and participants.

Section 2. SAFE Program Procedures. Unless a different procedure or process for a SNAP requirement is specified in this administrative regulation, all SNAP requirements specified in 921 KAR Chapter 3 shall apply to SAFE, including the process for:

- (1) A fair hearing;
- (2) An administrative disqualification hearing;
- (3) An appeal;
- (4) A disqualification;
- (5) A claim and collection of a claim; and
- (6) EBT issuance.

Section 3. Eligibility for SAFE. (1) An individual may qualify for SAFE benefits if the individual:

- (a) Is a Kentucky resident;
- (b) Is:
  - 1. A current SSI recipient; or
  - 2. SSI eligible, but SSI benefits are currently suspended;
- (c) Is age sixty (60) or older;
- (d) Is not institutionalized;
- (e) Is:
  - 1. Single, widowed, divorced, or separated; or
  - 2. Married and living with a spouse who meets the criteria specified in (a) through (d) and (f) of this subsection; and
- (f) Purchases and prepares food separately from another individual who shares the same residence, but is not a member of the applicant's household as defined by [in] 921 KAR 3:010.

(2) The cabinet shall use SDX to verify an applicant's marital and institutional status.

(3) If a household member does not meet the criteria listed in subsection (1) of this section, the household:

- (a) Shall not be eligible for SAFE; and
- (b) May apply for regular SNAP benefits in accordance in 921 KAR 3:030.

(4) An individual who meets the criteria of subsection (1) of this section may apply for regular SNAP benefits instead of SAFE benefits.

(5) An individual shall not receive SAFE benefits and regular SNAP benefits at the same time.

Section 4. SAFE Application Process. (1) Through use of the SDX files, the cabinet shall:

(a) Identify SSI participants who are potentially eligible for SAFE; and

(b) Mail each identified SSI household:

1. ~~An [a-A] SF-1, Simplified Assistance for the Elderly (SAFE) Application[-7/15; or~~

~~b- On or after December 28, 2015, a SF-1, 12/15]; and~~

2. A return envelope.

(2) A SAFE application shall be considered filed if the SF-1 is:

- (a) Signed; and
- (b) Received at the Department for Community Based Services, Division of Family Support.

(3) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) calendar days of the date the application is filed.

Section 5. SAFE Certification Process. (1) The cabinet shall process a SAFE application without requiring an interview.

(2) Information necessary to certify a SAFE application shall be obtained from SDX with the exception of the information provided by the applicant on the SF-1 or the SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form.

(3) The cabinet shall certify an eligible household for SAFE benefits for up to thirty-six (36) months.

(4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice upon certification or denial.

(5) In the month preceding the last month of the household's certification period, the cabinet shall send a SAFE household an:

~~(a) A] SF-2[-11/14; or~~

~~(b) On or after December 28, 2015, a SF-2, 12/15].~~

Section 6. SAFE Benefits. (1) The cabinet shall provide a SAFE household a standard monthly benefit amount approved by the U.S. Department of Agriculture's Food and Nutrition Service and listed in the SF-1.

(2) The standard SAFE benefit amounts shall be based on:

- (a) Shelter costs;
- (b) Household size; and
- (c) The average benefits received by a similar household in the regular SNAP.

Section 7. Changes in Household Circumstances. (1) A household receiving SAFE benefits shall not be required to report any changes during the certification period.



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(2) The cabinet shall process changes in household circumstances based on information received from SDX.

(3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet shall not act upon the information unless the information is a change in a household member's:

- (a) Name;
(b) Date of birth; or
(c) Address.

(4) Unless a change in household circumstance results in a change in benefits, the cabinet shall not provide a SAFE household with notification of a change being made in household circumstances.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) [SF-1, Simplified Assistance for the Elderly (SAFE) Application", 7/15;
(b) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", 10/17[12/15;
(c) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", 11/14]; and
(b)[(d)] "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", 10/17[12/15].

(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.

ADRIA JOHNSON, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 19, 2017
FILED WITH LRC: September 29, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program (SAFE), a demonstration project administered by the cabinet to improve access to the Supplemental Nutrition Assistance Program (SNAP) for elderly and disabled individuals.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish technical eligibility requirements for individuals participating in SAFE.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment

of requirements for SAFE, a demonstration project administered by the cabinet to improve access to SNAP for elderly and disabled 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 through its establishment of eligibility requirements for SAFE used by the cabinet.

(2) If 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 facilitate increasing the low-shelter benefit for one-person households from \$30 to \$33 and the low-shelter benefit for two-person households from \$77 to \$82, consistent with the findings from the most recent federal evaluation of the project. The amendment also updates incorporated materials and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is required by U.S. Department of Agriculture-Food Nutrition Service in order to maintain cost neutrality of the demonstration project. Without the amendment, Kentucky risks losing SAFE through federal withdrawal or disallowance of the demonstration project eliminating improved access to SNAP for elderly and disabled individuals.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its adjustment of SAFE benefit amounts consistent with the latest federal evaluation of the project ensuring cost neutrality in relation to regular SNAP, a condition of the demonstration project's approval and continuation.

(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 conformity with federal requirements of the demonstration project, thereby supporting SAFE's continuation to improve SNAP access for elderly and disabled individuals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of August 9, 2017, there are 10,500 SAFE cases, including 11,223 individuals. Of those, 6,537 individuals in one- and two-person households will realize the increase in the low-shelter benefits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new or additional action required on the part of SAFE applicants and recipients.

(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 regulated entities associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will change the allotment for Simplified Assistance for the Elderly Program or "SAFE" households. The low-shelter benefit for 1-person households will increase from \$30 to \$33, and the low-shelter benefit for 2-person households will increase from \$77 to \$82.

(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 technical in nature and is not projected to result in an increase in state costs. This amendment will help maintain cost neutrality in SAFE, a condition of the demonstration project's federal approval.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to affect state costs.

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Child Care**  
**(Amendment)**

SAFE benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.2

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

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.2

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 imposes no 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 imposes no 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), 7 C.F.R. 271.4, 273.2

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no 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? This administrative regulation will generate no revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation will not require any additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not require any additional costs 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:

**922 KAR 2:160. Child Care Assistance Program.**

RELATES TO: KRS 194A.060, 199.892, 199.894(1), (5), 199.896, 199.898(1), (2), 199.8982, 199.899, 199.8994, 214.036, 314.011(5), 337.275, 600.020[(50)], 605.120(5), 620.020(10), [2014 Ky. Acts ch. 117, Part 1, G.9(3),] 2016 Ky. Acts ch. 149, Part 1, G.9(7), 7 C.F.R. 1463, 20 C.F.R. 676-678, 34 C.F.R. 361, 463[652, 660-674], 45 C.F.R. 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 7 U.S.C. 2012, 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723(a)(5), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1395w-141, 1771-1793, 2000d, 3001, 4950-5085, 8621, 9902(2), 9857-9858q, 10602(c)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 9857-9858q, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner ~~that~~[which] is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program effective October 1, 2017, to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that may ~~affect~~[affects] eligibility or benefit amounts, such as:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;
- (h) Beginning or ending an educational activity;
- (i) Change in child care provider;
- (j) Change in address or residence;
- (k) Change in marital status; or
- (l) Beginning or ending receipt of unearned income.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child Care and Development Fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined ~~by~~[in] 922 KAR 1:330, Section ~~1(4)~~[4(3)].

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.

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(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

(12) "Family child-care home" is defined by KRS 199.894(5).

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Health professional" means a person actively licensed as a:

- (a) Physician;
- (b) ~~Physician~~[Physician's] assistant;
- (c) Advanced practice registered nurse;
- (d) Qualified mental health professional as defined by KRS 600.020(52)[(50)]; or
- (e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(15) "Homeless" means an individual or a family lacking a fixed, regular, and adequate nighttime residence, including a child experiencing homelessness as defined by 45 C.F.R. 98.2[due to economic hardship].

(16) "In loco parentis" means a person acting in place of a parent, including:

- (a) A legal guardian;
- (b) An individual related by blood, marriage, or adoption to the child; or
- (c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(17) "Infant" means a child who is less than one (1) year old.

(18) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(19) "Parent" is defined by 45 C.F.R. 98.2.

(20) "Part day" means child care that is provided for less than five (5) hours per day.

(21) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(22) "Preventive services" is defined by KRS 620.020(10).

(23) "Provider" means the entity providing child care services, such as:

- (a) A member of a limited liability corporation (LLC);
- (b) The head of an organization;
- (c) An owner of a corporation;
- (d) A member of a partnership;
- (e) An owner of a business;
- (f) An individual provider; or
- (g) A stockholder of a stock-holding company.

(24) "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(25) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(26) "Related" means having one (1) of the following relationships:

- (a) Child;
- (b) Stepchild;
- (c) Grandchild;
- (d) Great-grandchild;
- (e) Niece;
- (f) Nephew;
- (g) Sibling;
- (h) Child in legal custody; or
- (i) Child living in loco parentis.

(27) "Responsible adult" means a person other than the applicant who is in the child's household and who is:

- (a) The natural parent, adoptive parent, or stepparent; or
- (b) The spouse of an individual caring for a child in loco parentis.

(28) "School-age child" means a child who has reached the sixth birthday.

(29) "State median income" or "SMI" means the estimated median income of households in the state.

(30) "Supplemental Nutrition Assistance Program" or "SNAP"

means the program, formerly known as the Food Stamp Program:

- (a) Defined by 7 U.S.C. 2012; and
- (b) Governed by 921 KAR Chapter 3.

(31) "Teenage parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.

(32) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. The following is received at the cabinet or its designee's office:

a.~~[Until April 1, 2017, a signed DCC-90, Application for Subsidized Child Care Assistance, 11/09, or DCC-90.1, Intent to Apply for Child Care Assistance, 11/09,; or~~

b.~~Effective April 1, 2017,]A signed DCC-90, Subsidized Child Care Assistance Application Summary, 04/17,] or~~

b. Submission in accordance with 921 KAR 2:040, Section 1(6); or

2. The agency is contacted, if the person:

- a. Has a physical or mental disability; and
- b. Needs special accommodation due to the impairment.

(b) An applicant may designate an authorized representative who presents identification to make application.

(c) An applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:

- 1. Deaf; or
- 2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C.[Section] 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, and 7 of this administrative regulation.

(a) An applicant or recipient shall be the primary source of information and shall:

- 1. Furnish verification of:
  - a. Income;
  - b. Technical eligibility; and
  - c. Employment; and
- 2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(c) A homeless household shall ~~have~~be approved for CCAP with an extended period to verify information not to exceed three (3) months[ninety (90) days] in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

- (a) Render a decision on each application; and
- (b)~~[To Provide written notification of the decision]~~ Within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send [:

1. ~~A DCC-105, Child Care Assistance Program Notice of Action, 11/09, to the applicant in accordance with Section 11(5)(a) of this administrative regulation; or~~

2. ~~Effective April 1, 2017,]~~ notice to the applicant in accordance with Section 11(4)[11(5)(b)] of this administrative regulation.

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(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

- (a) Assistance until approval of the application for benefits; or
- (b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

- 1. Resident of Kentucky; and
- 2. U.S. citizen or qualified alien;

(b) Is under age:

- 1. Thirteen (13) at the time of application or recertification; or
- 2. Nineteen (19) at the time of application or recertification and

is:

a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

- a. Licensed child-care center;
- b. Certified child-care home;
- c. Public school;
- d. Head Start; or
- e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or SNAP case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child-care[Child care] center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child-care[child-care] homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

(5) A child in foster care shall not be eligible for CCAP.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d)[A recipient who is less than ninety (90) days from:

1. The loss of employment, required number of employment hours, or training through no fault of the recipient and is actively searching for employment in accordance 42 U.S.C. 9858c(c)(2)(N)(iii);

2. The start of maternity leave; or

3. The start of medical leave from employment due to a health condition verified by a health professional;

(e) A relative caregiver pursuant to the conditions of a program established by KRS 605.120(5), who meets:

1. All requirements in this section; and

2. Income eligibility standards in Section 7 of this administrative regulation; or

(e)[(f)] A teen parent attending high school or pursuing a general equivalency degree (GED), including a period of recess or temporary break not to exceed three (3) months.

(2) A child shall be eligible to receive CCAP for up to three (3) months or in accordance with Section 8 of this administrative regulation if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who is homeless;

(b) An applicant who:

1. Is engaged in job search; and

2. Submits a completed DCC-90P, CCAP Job Search Documentation, within the three (3) months of job search verifying a minimum of ten (10) contacts with prospective employers;

(c) A recipient after the loss of employment, a reduction in the required number of employment hours, or cessation of attendance at a job training or educational program in accordance with 42 U.S.C. 9858c(c)(2)(N)(iii), to allow for job search or resumption of work or attendance at job training or educational program; or

(d) A recipient on maternity leave or other medical leave from employment as verified by a health professional, unless a temporary disability as verified by a health professional necessitates longer than three (3) months of CCAP eligibility.

(3) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 7(6)(d)[7(7)(d)] of this administrative regulation by an hourly pay rate of no less than minimum wage established in accordance with KRS 337.275. [(3) Until April 1, 2017, an applicant eligible in accordance with this section shall sign and return the DCC-91, Client Rights and Responsibilities Sheet, and the DCC-94, Child Care Service Agreement and Certificate, 11/09.]

Section 5. Requirements for Protection and Permanency Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

(3)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 10 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan. [(5) Until April 1, 2017, an applicant eligible in accordance

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with this section shall sign and return the DCC-94-]

Section 6. Kentucky Works Child Care Eligibility Determination.

- (1) A child shall be eligible for CCAP if the child:
(a) Resides with an applicant who is participating in the Kentucky Works Program described in 921 KAR 2:370; and
(b) Meets the requirements listed in Section 3 of this administrative regulation.
(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application as an integral part of a Kentucky Works Program self-sufficiency plan.
(3) Until April 1, 2017, an applicant eligible in accordance with this section shall sign and return the DCC-94-]

Section 7. Income Eligibility. (1) A child shall be eligible for the CCAP if the family's income is less than or equal to:

- (a) 160 percent of the federal poverty level as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2018 at initial application; or
(b) 165 percent of the federal poverty level as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2018 at recertification or recalculation.
(2) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.
(3) A child who is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.
(4) Excluded income shall be:
(a) K-TAP child only payments, including back payment;
(b) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;
(c) Educational grant, loan, scholarship, and work study income;
(d) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;
(e) The value of United States Department of Agriculture program benefits including:
1. Donated food;
2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;
3. Special food service program for a child pursuant to 42 U.S.C. 1775;
4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and
5. The monthly allotment under SNAP;
(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;
(g) In-kind income;
(h) Reimbursement for transportation in performance of an employment duty, if identifiable;
(i) Nonemergency medical transportation payment;
(j) Highway relocation assistance;
(k) Urban renewal assistance;
(l) Federal disaster assistance and state disaster grant;
(m) Home produce utilized for household consumption;
(n) Housing subsidy received from federal, state, or local governments;
(o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;
(p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;
(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:
1. Senior health aide; or
2. Member of the:
a. Service Corps of Retired Executives; or
b. Active Corps of Executives;
(r) Payment made to an individual from a program pursuant to

42 U.S.C. 4950 to 5085 if less than the minimum wage under state or federal law, whichever is greater, including:

- 1. Volunteers in Service to America (VISTA);
2. Foster Grandparents;
3. Retired and Senior Volunteer Program; or
4. Senior Companion;
(s) Payment from the cabinet for:
1. Child foster care; or
2. Adult foster care;
(t) Energy assistance payment made under:
1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or
2. Other energy assistance payment made to an energy provider or provided in-kind;
(u) The principal of a verified loan;
(v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;
(w) The advance payment or refund of earned income tax credit;
(x) Payment made from the Agent Orange Settlement Fund;
(y) Payment made from the Radiation Exposure Compensation Trust Fund;
(z) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;
(aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;
(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;
(cc) A payment received from the National Tobacco Growers Settlement Trust;
(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;
(ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);
(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;
(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141;
(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);
(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);
(jj) Income or earnings from a program funded under the Workforce Innovation and Opportunity Act [WIOA] pursuant to 20 C.F.R. 676-678 or 34 C.F.R. 361 or 463 [652 and 660 to 674]; [or]
(kk) Michelle P. waiver reimbursement in accordance with 907 KAR 1:835; or
(ll) Supplemental Security Income (SSI) for a child.
(5) Deductions from gross income shall be:
(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and
(b) Operating costs to determine adjusted gross income from self-employment.
(6) Best estimate.
(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.
(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:
1. Cents shall:
a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and
b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semi-monthly, monthly, quarterly, or annual earnings;
2. Unless it does not represent the ongoing situation, income

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from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by adding gross income from each pay period, dividing by the total number of pay periods considered, and converting the pay period figure to a monthly figure by multiplying a:

a. Weekly amount by[

(i) 4.334; or

(ii) ~~Effective April 1, 2017,~~ four and one-third (4 1/3);

b. Biweekly amount by[

(i) 2.167; or

(ii) ~~Effective April 1, 2017,~~ two and one-sixth (2 1/6); or

c. Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received a calendar month of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period;

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph; and

c. Rounding to the nearest dollar.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

2. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3. Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing total gross income and total amount of allowable expenses separately by twelve (12) or the appropriate number of months, and rounding the quotients to the nearest dollar; and

d. Subtracting the rounded monthly allowable expense quotient from the rounded monthly gross income quotient.

(e) If the cabinet or its designee becomes aware of a change in circumstance, the best estimate shall be recalculated.

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be recertified at least every twelve (12) months.

(2) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(3) Unless a nonrelative is approved as fictive kin under 922 KAR 1:140 and Section 5 of this administrative regulation, a nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

(4) In accordance with 42 U.S.C. 9858c(c)(2)(N), if a family's income does not exceed eighty-five (85) percent of Kentucky's SMI, the family shall remain eligible for CCAP until recertification in accordance with this section.

Section 9. Payment Rates and Policy. (1)(a) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rate[Rates] Chart[~~02/16~~].

(b) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(c) The maximum payment rates shall include the following categories:

1. Full day;

2. Part day;

3. Licensed;

4. Certified;

5. Registered;

6. Infant/Toddler;

7. Preschool child; and

8. School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;

2. National Early Childhood Program Accreditation;

3. National Association for Family Child Care;

4. Council on Accreditation; or

5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

1. 7 p.m. to 5 a.m. daily; or

2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:

(a) With a special need; or

(b) Who is age thirteen (13), but under age nineteen (19) at application or recertification, and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or

2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

(a) Three (3) children receiving CCAP per day; or

(b) Six (6) children receiving CCAP per day, if those children are:

1. A part of a sibling group; and

2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 10. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section ~~5(3)~~~~5(4)~~ of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

Family Co-Payment Per Day
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Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child	Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay	
			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more
0	899	\$0	\$0	\$0	\$0	\$0	\$0	\$0
900	999	\$2	\$2	\$3	\$2	\$2	\$2	\$2
1,000	1,099	\$3	\$3	\$3	\$2	\$3	\$2	\$3
1,100	1,199	\$4	\$4	\$4	\$3	\$3	\$2	\$3
1,200	1,299	\$4	\$4	\$5	\$4	\$4	\$3	\$3
1,300	1,399	\$5	\$5	\$5	\$5	\$5	\$3	\$4
1,400	1,499	\$6	\$5	\$6	\$5	\$6	\$4	\$4
1,500	1,599	\$7	\$6	\$6	\$6	\$6	\$5	\$5
1,600	1,699	\$8	\$6	\$7	\$6	\$7	\$6	\$6
1,700	1,799	\$9	\$7	\$8	\$7	\$8	\$6	\$7
1,800	1,899	\$10	\$8	\$9	\$7	\$8	\$7	\$8
1,900	1,999	\$10	\$9	\$10	\$8	\$9	\$8	\$9
2,000	2,099	\$11	\$10	\$11	\$8	\$9	\$8	\$9
2,100	2,199.99	\$12	\$10	\$11	\$9	\$10	\$9	\$10
2,200	2,299.99	\$12	\$11	\$12	\$10	\$11	\$9	\$10
2,300	2,399.99	\$12	\$12	\$13	\$11	\$12	\$9	\$10
2,400	2,499.99	\$12	\$12	\$13	\$12	\$13	\$10	\$11
2,500	2,599.99	\$12	\$13	\$14	\$12	\$13	\$10	\$11
2,600	2,699.99	\$12	\$13	\$14	\$13	\$14	\$12	\$13
2,700	2,799.99	\$12	\$13	\$14	\$13	\$14	\$13	\$14
2,800	2,899.99	\$12	\$13	\$14	\$14	\$15	\$14	\$15
2,900	2,999.99	\$12	\$13	\$14	\$14	\$15	\$16	\$17
3,000	3,099.99	\$12	\$13	\$14	\$15	\$16	\$18	\$19
3,100	3,199.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,200	3,299.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,300	3,399.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,400	3,499.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,500	3,599.99	\$12	\$13	\$14	\$15	\$16	\$24	\$25
3,600	3,699.99	\$12	\$13	\$14	\$15	\$16	\$25	\$25

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(c) In accordance with 45 C.F.R. 98.21, a copayment for an eligible family shall:

1. Be determined at initial application or recertification; and
2. Not increase during the twelve (12) month eligibility period.

Section 11. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a [child care certificate: 1. The]DCC-94, Child Care Service Agreement and Certificate[11/09; or 2. Effective April 1, 2017, the DCC-94, 04/17].

(3) Upon enrollment or reenrollment with a provider, an applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the:

- (a)[The DCC-91 and the] DCC-94[, 11/09]; or
- (b)[Effective April 1, 2017, the] DCC-90[, 04/17].

(4)[Until April 1, 2017, an applicant approved in accordance with Section 5 or 6 of this administrative regulation shall sign and return the DCC-91.

(5) Notification of action. (a)[Until April 1, 2017, a DCC-105, Child Care Assistance Program Notice of Action, 11/09:

1. Shall serve many purposes in the administration of CCAP, including notice to an applicant or recipient of:

- a. Changes in:
  - (i) Copayment;
  - (ii) Certification period; or
  - (iii) Household size;

b. Approval of:

- (i) Application; or
- (ii) Continued eligibility; or

c. Adverse action, including:

- (i) Denial of application;
  - (ii) Reduction of CCAP benefits; or
  - (iii) Termination of CCAP benefits;
2. Providing notice of an adverse action shall include:

- a. Reason for the adverse action;
- b. Citation from an applicable state administrative regulation; and

c. Information regarding the:

- (i) Informal dispute resolution process in accordance with Section 17 of this administrative regulation; and
- (ii) Opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation; and

3. Shall contain language that differs according to the purpose of the notice described in subparagraphs 1 through 2 of this paragraph.

(b) Effective April 1, 2017:

4.] A DCC-94C, Provider Notification Letter, shall provide notice to a provider of a child's discontinuation from CCAP or disenrollment with a provider.

[b];- 2.] A DCC-94.1, CHILD CARE Approval/Change Notice, shall provide notice of:

- 1.[a.] A change in the certification period of child;
- 2.[b.] Approval of an application; or
- 3.[c.] Continued eligibility.

[c];- 3.] A DCC-105, Child Care Denial/Discontinuance Notice,[04/17,] shall provide notice of:

- 1.[a.] Denial of an application;
- 2.[b.] Discontinuance of a CCAP benefit;
- 3.[c.] Reason for adverse action;
- 4.[d.] Citation from an applicable state administrative regulation; and

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~~5.[e.]~~ Information regarding the opportunity to request an administrative hearing in accordance with Section 17 of this administrative regulation.

~~(d)[; and 4.]~~ The language on the form shall differ according to the purpose of the notice described in paragraphs (a) through (c) of this subsection~~(subparagraphs 1 through 3 of this paragraph).~~

~~(5)[(6)]~~ An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

~~(6)[(7)]~~ Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

~~(7)[(9)]~~ An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

(a) Discontinued from CCAP benefits; and

(b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

~~(8)[(9)]~~ An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 13(1)(c) of this administrative regulation.

Section 12. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 2:090, Child-care[Child-care] center licensure;

(c) 922 KAR 2:100, Certification of family child-care[child-care] homes;

(d) 922 KAR 2:110, Child-care center[Child-care facility] provider requirements;

(e) 922 KAR 2:120, Child-care center[Child-care facility] health and safety standards;

(f) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program; ~~[and]~~

(g) 922 KAR 2:190, Civil penalties;

(h) 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; and

(i) 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals, upon its adoption.

(4) The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180.

(5) If CCAP benefits are reduced or discontinued due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(6) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(7) The cabinet shall send a notice of adverse action at least ten (10) calendar days in advance of taking adverse action.

(8) In accordance with 45 C.F.R. 98.46, the cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) A child experiencing homelessness as defined by 45 C.F.R.

98.2:

~~(d)~~ K-TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

~~(e)[(d)]~~ Teen parents attending high school or pursuing a general equivalency degree (GED);

~~(f)[(e)]~~ A K-TAP recipient attempting to transition off assistance through employment;

~~(g)[(f)]~~ A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

~~(h)[(g)]~~ A low income working parent; or

~~(i)[(h)]~~ A parent in education or training programs leading to self-sufficiency.

Section 13. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and give to the parent for submission to the cabinet or its designee, upon a child's enrollment or reenrollment with the provider and prior to receiving payment from the CCAP, ~~the following form: 1. Until April 1, 2017, the DCC-94, 11/09; or 2. Effective April 1, 2017, the DCC-94[, 04/17];~~

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c)1. Maintain the DCC-94E, Child Care Daily Attendance Record, in which the attendance is:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and

b. Signed by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E upon request of the cabinet or its designee;

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

2. 922 KAR 2:090, Child-care[Child-care] center licensure;

3. 922 KAR 2:100, Certification of family child-care[child-care] homes;

4. 922 KAR 2:110, Child-care center[Child-care facility] provider requirements;

5. 922 KAR 2:120, Child-care center[Child-care facility] health and safety standards;

6. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program; ~~[and]~~

7. 922 KAR 2:190, Civil penalties; ~~[and]~~

8. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; and

9. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals, upon its adoption; and

(e) Complete the cabinet approved training on billing and the DCC-94E prior to receiving an initial payment from CCAP.

(2) A licensed or certified child care provider shall complete and submit ~~the following form prior to receiving payment from the CCAP:~~

~~(a) Until April 1, 2017,] the DCC-94B, Licensed or Certified Provider Agreement Form, prior to receiving payment from CCAP[4/0/14; or~~

~~(b) Effective April 1, 2017, the DCC-94B, 04/17].~~

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:



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1. Each employee of each shift;
2. The work hours for each employee of each shift;
3. The management for each shift;
4. The work hours for each management employee of each shift; and

5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

1. The operating plan meets all requirements of:

a. For a licensed child-care center, 922 KAR 2:090, 922 KAR 2:110, and 922 KAR 2:120; or [and]

b. For a certified family child-care home, 922 KAR 2:100; and

2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected.

(5) A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180 conducted by the cabinet or its designee.

(6) A provider shall be ineligible for CCAP if the provider:

(a) Was discontinued or disqualified from participation in a governmental assistance program due to fraud or abuse of the program;

(b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or

(c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the previous provider will be involved in the new provider's operations in any capacity.

Section 14. Other Services. To the extent [state] funds are available, a child whose family's income is over the income limits for the CCAP described in Section 7 of this administrative regulation may be eligible for:

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

(6) Other items relating to child care services with prior approval of the cabinet.

Section 15. An improper payment, claim, or penalty in CCAP shall be handled in accordance with 922 KAR 2:020.

Section 16. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the family;

2. An illness of the:

a. Child; or

b. Applicant; or

3. A disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 10[40(4)] of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's

designee, or a representative of an agency with regulatory authority:

a. Entry into the provider's premises during operating hours; or  
b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

a. Cabinet review, including CCAP quality control or case review; or

b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 13(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 13(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 12(8) of this administrative regulation.

Section 17. Administrative Hearings. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with [:

~~(a) 922 KAR 1:320 until April 1, 2017; or (b)] 921 KAR 2:055 [effective April 1, 2017].~~

(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:

~~(a) [1. Until April 1, 2017, 922 KAR 1:320; or 2. Effective April 1, 2017,] 922 KAR 2:260; or~~

~~(b) 922 KAR 2:020.~~

Section 18. Records. Records of CCAP shall be maintained and disclosed in accordance with:

(1) KRS 194A.060;

(2) 45 C.F.R. 98.90(e); and

(3) 45 C.F.R. 205.50(a)(1)(i).

Section 19. Incorporation by Reference. (1) The following material is incorporated by reference:

~~(a) ["DCC-90, Application for Subsidized Child Care Assistance", 11/09;~~

~~(b)] "DCC-90, Subsidized Child Care Assistance Application Summary", 10/17[04/17];~~

~~(b) "DCC-90P, CCAP Job Search Documentation", 10/17;~~

~~(c) ["DCC-90.1, Intent to Apply for Child Care Assistance", 11/09;~~

~~(d) "DCC-91, Client Rights and Responsibilities Sheet", 04/13;~~

~~(e) "DCC-94, Child Care Service Agreement and Certificate", 11/09;~~

~~(f)] "DCC-94, Child Care Service Agreement and Certificate", 10/17[04/17];~~

~~(d) [(g)] "DCC-94.1, CHILD CARE Approval/Change Notice", 10/17[04/17];~~

~~(e) [(h)] "DCC-94B, Licensed or Certified Provider Agreement Form", 10/14;~~

~~(i)] "DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;~~

~~(f) [(j)] "DCC-94C, Provider Notification Letter", 10/17[04/17];~~

~~(g) [(k)] "DCC-94E, Child Care Daily Attendance Record", 7/13;~~

~~(h) [(l)] "DCC-97, Provider Billing Form", 04/13;~~

~~(i) [(m)] "DCC-105, Child Care Assistance Program Notice of Action", 11/09;~~

~~(n)] "DCC-105, Child Care Denial/Discontinuance Notice", 10/17[04/17]; and~~

~~(j) [(o)] "DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 10/17[02/16].~~

(2) This material may be inspected, copied, or obtained,

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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.

ADRIA JOHNSON, Commissioner  
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 19, 2017

FILED WITH LRC: September 29, 2017 at 11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on November 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

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.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(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 CCAP.

(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 CCAP in a manner which is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

(2) If 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 updates content to support the deployment of CCAP on benefit effective October 1st and to ensure policies pertaining to eligibility determinations and certification, children experiencing homelessness, and job search are consistent with federal requirements. In addition, the amendment makes updates and technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure CCAP policy congruence with CCAP deployment on benefit and the federal

reauthorization of CCDF, thereby improving qualified families' access to CCAP and helping the state avoid threat of federal corrective action or penalty to its block grant award. The amendment is also necessary to support parents' efforts to achieve self-sufficiency and the health and welfare of vulnerable children.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning policy with more efficient operations and overarching federal requirements, promoting parents' efforts to achieve self-sufficiency and the provision of quality child care, enhancing program integrity, and preserving the health and welfare of vulnerable children.

(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 CCAP in accordance with federal laws and the interests of households and children served.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of June 2017, there were 27,280 unique children in 15,074 unique families receiving CCAP. There were 2,342 child care providers, and 1,755 child care providers were participating in CCAP.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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: Effective with this administrative regulation, regulated entities will be able to access CCAP through the benefit self-service portal, the Department for Community Based Services (DCBS) family support call services, and all DCBS offices during state operating hours. In addition, CCAP will be offered to families seeking public assistance benefits, thus better ensuring working and low-income families have access to the full array of work supports for which they qualify.

(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 costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the policies that are more parent- and work-friendly, including CCAP for initial job search, additional time for homeless households to produce verification, clarifications regarding adjustments during certification periods; and access to CCAP through benefit, family support call services, and local DCBS offices during all state operating hours. Regulated entities will also benefit from improved accuracies of an integrated eligibility and enrollment system and CCAP's alignment with the CCDF Reauthorization of 2014 preserving the state's federal award.

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

(a) Initially: The administrative regulation will be implemented within available federal and state appropriations for CCAP. Implementation of this administrative regulation better ensures the state's compliance with CCDF Reauthorization requirements and reduces the threat for federal corrective action or financial penalty.

(b) On a continuing basis: The administrative regulation will be implemented within available federal and state appropriations for CCAP. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are the federal Child Care and Development Fund Block Grant, state match, state maintenance of effort funds, and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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? The Child Care Assistance Program is implemented in a like manner statewide. However, provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. The provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q
2. State compliance standards. KRS 194A.050(1), 199.892, 199.8994
3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q
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, 199.892, 199.8994, 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Child Care Assistance Program (CCAP) has been operational for a number of years. It does not directly generate revenues for the state; however, it supports the health, safety, and welfare of children and the ability of low-income parents to work and obtain additional skills and training. This administrative regulation will not directly generate any new revenue for the first year. Research suggests that quality early care and education help avoid future public costs.

(b) How 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 directly generate any new revenue for 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 federal and 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 federal and 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:

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Child Care  
(Amendment)

922 KAR 2:260. Child care service appeals.

RELATES TO: KRS Chapter 13B, 23A.010, 194A.005, 194A.030(1), 45 C.F.R. Part 98, 205.10, 42 U.S.C. 601-619, 9857-9858q

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) designates the Cabinet for Health and Family Services as the primary state agency responsible for leadership in protecting and promoting the well-being of Kentuckians through the delivery of quality human services. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds. Under 42 U.S.C. 9858c, the cabinet is the agency designated to administer the Child Care and Development Fund block grant. KRS 13B.170 permits an agency to promulgate administrative regulations to carry out provisions of KRS Chapter 13B pertaining to administrative hearings. This administrative regulation establishes cabinet procedures related to appeals and complaints for child care benefits and services under 922 KAR Chapter 2 effective October[April] 1, 2017.

Section 1. Definitions. (1) "Child care assistance" means the subsidy benefits as described by 922 KAR 2:160, Child Care Assistance Program.

(2) "Commissioner" means the Commissioner of the Department for Community Based Services or designee.

(3) "Contract agency" means a business or organization that offers child care benefits or services to the public through a contract or agreement with the cabinet.

(4) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal in accordance with Section ~~5(8)~~[~~5(7)~~] of this administrative regulation.

(5) "Parent" is defined by 45 C.F.R. 98.2.

(6) "Provider" means the entity providing child care services.

(7) "Registered child care provider" means a caregiver registered under 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program.

Section 2. Right to Appeal. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with 922 KAR 2:160, Section 17(1).

(2) A provider may request an administrative hearing regarding certification, licensure, or civil monetary penalty through the Office of Inspector General, Division of Regulated Child Care in accordance with:

(a) 922 KAR 2:090, Child-care center licensure;

(b) 922 KAR 2:100, Certification of family child-care homes;[.]

or

(c) 922 KAR 2:190, Civil penalties.

(3) An administrative hearing pertaining to a matter not specified in subsection (1) or (2) of this section may be requested in accordance with:

(a) This administrative regulation; or

(b) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties.

(4) With the exception of subsections (1), (2), and (3)(b) of this section, an individual or provider aggrieved by an action of the cabinet may request an administrative hearing in accordance with

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this administrative regulation for a matter by which a Kentucky Revised Statute or 922 KAR Chapter 2 expressly permits the appeal of a cabinet action or alleged act.

(5) With the exception of subsections (1), (2), and (3)(b) of this section, a parent or provider aggrieved by an action of the cabinet may request review of the following through an administrative hearing in accordance with this administrative regulation:

(a) A cabinet denial, reduction, suspension, or termination of services or federally-funded benefit, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapter 2; or

(b) A cabinet failure to act within program timeframes to a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapter 2.

Section 3. Matters Not Appealable through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing in accordance with this administrative regulation:

(a) A matter in which a court:

1. Has previously made a judicial determination or issued an order on the same issue being appealed; or

2. Is currently engaged in legal proceedings regarding the same issue being appealed;

(b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;

(d) Failure to submit a written request for appeal within the time frame established by Section ~~5(5)(b)~~~~5(4)(b)~~ of this administrative regulation; or

(e) A situation where state or federal law requires adjustment of a payment or grant, except if a payment or grant computation is incorrect.

(2) A complaint of discrimination may be filed with the cabinet's Office of Human Resource Management in accordance with 920 KAR 1:090.

Section 4. Service Complaints. (1) If a matter is not subject to review through an administrative hearing, a parent, a provider, or an early care and education professional may:

(a) Attempt to resolve the issue by submitting a written complaint to the department's Division of Child Care within thirty (30) calendar days after the date of the cabinet action or alleged act; or

(b) Contact the cabinet's Office of the Ombudsman if the matter was not previously reviewed:

1. By that office; or

2. Pursuant to paragraph (a) of this subsection.

(2)(a) The director of the department's Division of Child Care, director's designee, or the cabinet's Office of the Ombudsman shall provide a written response to the complainant within thirty (30) calendar days of receipt of a written complaint not subject to review through an administrative hearing.

(b) The director of the department's Division of Child Care or the ombudsman may grant an extension to the response timeframe given in paragraph (a) of this subsection if:

1. Extenuating circumstances prolong the review of the complaint; and

2. Notice of the extension is provided to the complainant.

(3)(a) A parent, provider, or an early care and education professional dissatisfied with a written response rendered by the director of the department's Division of Child Care, director's designee, or the Office of the Ombudsman may request that the commissioner review the complaint and the written response.

(b) A request for review shall be submitted in writing to the commissioner within ten (10) calendar days of receipt of the written response provided in accordance with subsection (2) of this section.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty

(30) calendar days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the complainant of the need for an extension to the timeframe specified in this paragraph.

(d) The department shall abide by the commissioner's written determination.

(4) The department may compile data regarding service complaints to:

(a) Fulfill federal and state reporting requirements; or

(b) Use for program development and evaluation.

Section 5. Request for Appeal. (1) The cabinet shall provide:

(a) Information regarding appeals to a child care assistance applicant or recipient pursuant to 921 KAR 2:046~~922 KAR 3:030~~; or

(b) A DCC-88, Child Care Service Appeal Request, to a provider:

1. In accordance with 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program, for a:

a. Withdrawal or denial of child care registration application, not at the request of the applicant; or

b. Revocation or closure of a registered child care provider, not at the request of the provider;

2. Upon a reduction or revocation of a child care provider's STARS level in accordance with:

a. 922 KAR 2:170, STARS for KIDS NOW Program Type I licensed child-care centers; ~~or~~

b. 922 KAR 2:210, STARS for KIDS NOW Program for Type II licensed and certified family child-care homes; or

c. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; or

3. Upon a revocation of a trainer's credential in accordance with 922 KAR 2:240, Kentucky Early Care and Education Trainer's Credential and training approval.

(2) At least ten (10) calendar days prior to the denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall hand-deliver or mail:

(a) A DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals; or

(b) Notice in accordance with 922 KAR 2:160, Section 11.

(3) Unless the matter is appealable in accordance with Section 2(1), 2(2), or 2(3)(b) of this administrative regulation, the cabinet shall send a notice of adverse action at least ten (10) calendar days prior to the denial, reduction, modification, suspension, or termination of a benefit or services.

~~(4)~~~~(3)~~ The cabinet may take emergency action under KRS 13B.125.

~~(5)~~~~(4)~~ A request for appeal shall:

(a) Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance;

(b) Be submitted to the cabinet no later than thirty (30) calendar days from the date:

1. That the notice provided in accordance with subsection ~~(3)~~~~(2)~~ of this section was issued; or

2. Of the occurrence of the disputed action;

(c) Describe the:

1. Cabinet action in dispute; or

2. Alleged act;

(d) Specify:

1. The reason the appellant disputes the cabinet's action;

2. Name of each cabinet staff person involved with the disputed action, if known; and

3. Date of the cabinet action or alleged act in dispute; and

(e) Include the notice provided in accordance with subsection ~~(3)~~~~(2)~~ of this section, if available.

~~(6)~~~~(5)~~(a) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall

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inform the individual in writing that the:

- 1. Matter is not appealable; and
- 2. Resolution of the matter may be pursued through the service complaint process described in Section 4 or 9 of this administrative regulation.

(7)(6) If the cabinet receives a written request for appeal within ten (10) calendar days from the date the notice provided in accordance with subsection (3)(2) of this section was issued or date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the outcome of the appeal.

(8)(7) The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification may include:

- (a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or
- (b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:
  - 1. Submit a written request for appeal; or
  - 2. Participate in a proceeding related to an administrative hearing.

Section 6. Administrative Hearing. Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B.

Section 7. Recommended Order. (1) A copy of the recommended order shall be sent simultaneously to:

- (a) Each party to the administrative hearing;
- (b) The commissioner of the Department for Community Based Services; and
- (c) The secretary of the Cabinet for Health and Family Services or designee.

(2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS 13B.110(4) with the secretary, which shall:

- (a) Be filed within fifteen (15) calendar days of the date the recommended order was mailed;
- (b) Be based on facts and evidence presented at the hearing;
- (c) Not refer to evidence that was not introduced at the hearing; and
- (d) Be sent to each other party involved in the hearing.

Section 8. Final Order. (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.

(2) An aggrieved party may petition for judicial review in accordance with:

- (a) KRS 13B.140 to 13B.160; or
- (b) KRS 23A.010.

Section 9. Contract Agencies. (1) A contract agency shall offer a complaint process consistent with:

- (a) Section 4 of this administrative regulation; or
- (b) Provisions of the contract or agreement between the contract agency and the cabinet, if the provisions are different from Section 4 of this administrative regulation.

(2)(a) An individual dissatisfied with a final written response rendered by a contract agency regarding a complaint may request that the commissioner review the complaint and the contract agency's written response.

(b) A request for review shall be submitted to the commissioner within ten (10) calendar days of the contract agency's written response.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

- 1. Extenuating circumstances prolong the review of the complaint; and
  - 2. The commissioner notifies the client of the need for an extension to the timeframe specified in this paragraph.
- (d) The contract agency shall abide by the commissioner's written determination.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) [form] "DCC-88, Child Care Service Appeal Request", 04/17; and
- (b) "DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals", 10/17, is incorporated by reference.

(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.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 18, 2017

FILED WITH LRC: September 29, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2017, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures related to appeals and complaints for benefits and services under 922 KAR Chapter 2.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the establishment of cabinet appeal and complaint procedures for benefits and services under 922 KAR Chapter 2.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of cabinet appeal and complaint procedures for benefits and services under 922 KAR Chapter 2.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes through its establishment of cabinet procedures related to appeals and service complaints for benefits and services under 922 KAR Chapter 2.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will change the existing administrative regulation by aligning its content with the new Kentucky All STARS tiered quality-rating

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improvement system for early care and education and the deployment of the child care assistance program on the benefit eligibility and enrollment system. The amendment to this administrative regulation also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to support the deployment of CCAP on the benefit system and the forthcoming transition to the new child care quality-rating system, All STARS. The changes to this administrative regulation support federal compliance and help the state avoid federally imposed corrective action and financial penalty.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes through its provision of due process and complaint reviews congruent new business processes and programmatic developments.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by preserving due process and complaint procedures for child care benefits and services as governed by 922 KAR Chapter 2.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Less than 200 service appeals for child care programming, including the Child Care Assistance Program, were processed in 2016.

(4) Provide an analysis of how the entities identified in question (3) will be impacted 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 to this administrative regulation is largely technical and conforming in nature and does not propose a new impact on regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will experience no new or additional cost as a result of the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation supports the deployment of the Child Care Assistance Program on benefit and the transition to the new quality-rating system for early care and education, All STARS. Both initiatives improve qualified households' access to the full array of work supports and to quality child care programming. The initiatives also support the state's continued federal compliance reducing threat to the state's federal award sustaining programming.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding sources for this administrative regulation include the federal Child Care and Development Fund block grant, state matching and maintenance of effort funds for the block grant, and tobacco settlement dollars.

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

45 C.F.R. 98, 205.10, 42 U.S.C. 601-619, 9857-9858q

2. State compliance standards. KRS 13B.170, 194A.010(2), 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 205.10, 42 U.S.C. 601-619, 9857-9858q

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 13B.170, 194A.010(2), 194A.050(1), 45 C.F.R. 98, 205.10, 42 U.S.C. 601-619, 9857-9858q

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues for the subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will impose no new or additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will impose no new or additional costs 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:

NEW ADMINISTRATIVE REGULATIONS

DEPARTMENT OF STATE  
Kentucky Registry of Election Finance  
(New Administrative Regulation)

**32 KAR 1:045. Election Finance Statement - State Executive Committee Building Fund.**

RELATES TO KRS 121.172(8), 121.180(2)(b), (c)  
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4), 121.172(1)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the authority 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 121.172(1) requires the Registry to promulgate administrative regulations to implement provisions permitting a state executive committee of a political party to establish a building fund account. KRS 121.172(8) requires a state executive committee to report all contributions to and expenditures from a building fund account to the Registry of Election Finance on a quarterly basis. KRS 121.180(2)(b) and (c) requires a state executive committee of a political party that has established a building fund account under KRS 121.172 to make full report to the Registry, to be received by the registry within five (5) days after the close of each calendar quarter. This administrative regulation establishes a single form for the reporting of finances by a state executive committee building fund account.

Section 1. Any state executive committee of a political party that establishes a building fund account under KRS 121.172 shall file the report required by KRS 121.180 on the form incorporated by reference in this administrative regulation.

Section 2. Incorporation by Reference. (1) The "State Executive Committee – Building Fund Election Finance Statement", reference KREF 006/E-BF, revised 09/2017, 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: September 27, 2017

FILED WITH LRC: September 29, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 27, 2017 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 until November 30, 2017. 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 new administrative regulation – 32 KAR 1:045 - establishes a form for the reporting of the finances of a state executive committee building fund account in Kentucky. This administrative regulation is required by KRS 121.172(1) and (8), as established by 2017 Senate Bill 75, requiring a state executive committee of a political party to report all contributions to and expenditures from a building fund account to the Registry of Election Finance on a quarterly basis, under KRS 121.180(2)(b) and (c).

(b) The necessity of this administrative regulation: KRS 121.120(1)(g) requires the Registry to promulgate administrative regulations to carry out the provisions of KRS Chapter 121. KRS 121.172(1) requires the Registry to promulgate administrative regulations to implement KRS 121.172 relative to the establishment of a state political party building fund account.

(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 121.172(1), as it prescribes a form for the reporting of a state executive committee building fund account.

(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 121.172 and KRS 121.180 and specifically complies with the provisions of 2017 Senate Bill 75.

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

(a) How the amendment will change this existing administrative regulation: Question does not apply, as this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Question does not apply, as this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Question does not apply, as this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Question does not apply, as this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state executive committee of political parties that choose to establish a building fund account under KRS 121.172 will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: State executive committees of political parties that choose to establish a building fund account under KRS 121.172 shall report to the Registry on a quarterly basis all contributions to and expenditures from the building fund account as required by KRS 121.180.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will 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 finance of a state executive committee building fund account will be disclosed to the public, in compliance with KRS Chapter 121 and required by 2017 Senate Bill 75.

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

(a) Initially: Initial costs to administer the program are estimated to be less than \$10,000.

(b) On a continuing basis: Ordinary printing costs for forms are

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anticipated in the Registry's budget, as well as ordinary programming costs for resulting database changes.

(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 regulation apply equally to all state executive committees of political parties that choose to establish a building fund account.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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), (4), KRS 121.172(1), (8), 121.180(2)(b), (c)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Initial costs to administer this program are estimated to be less than \$10,000.

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

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

Revenues (+/-): None.  
Expenditures (+/-): + less than \$10,000 in year 1  
Other Explanation: N/A

TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Motor Vehicle Licensing  
(New Administrative Regulation)

601 KAR 23:020. Military surplus vehicle.

RELATES TO: KRS 186.010, 186.020, 186A.070(1), 186A.073, 186A.115, 186A.170, 49 C.F.R. Section 571.7

STATUTORY AUTHORITY: KRS 186A.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.073(4) and (5) requires the Kentucky Transportation Cabinet to promulgate administrative regulations establishing the procedures necessary to apply for, and obtain title for a military surplus vehicle. This administrative regulation establishes the

requirements for an applicant to obtain a certificate of title and registration for a military surplus vehicle.

Section 1. Definitions. (1) "Military surplus vehicle" is defined by KRS 186.010(20).

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

Section 2. Application for Title. (1) The owner of a military surplus vehicle shall apply for a certificate of title as established in paragraphs (a) through (c) of this subsection.

(a) The military surplus vehicle shall be inspected by a certified motor vehicle inspector who meets the requirements of 601 KAR 9:085 and 601 KAR 9:090.

(b) The certified motor vehicle inspector shall complete a Military Surplus Vehicle Inspection form, TC 96-344, certifying that the vehicle is roadworthy.

(c) The applicant for title shall submit to the county clerk of residence:

1. The completed Military Surplus Inspection Form, TC 96-344 and supporting documents that establish the sale or transfer of the vehicle from the military or the military's designated agent to the applicant; and

2. Proof that the military surplus vehicle was originally manufactured under the mandated requirements of 49 C.F.R. Section 571.7. A military surplus vehicle built prior to 1968 and prior to the requirements of 49 C.F.R. Section 571.7 shall be exempt from inspection.

(2) If the previous owner is a person or entity other than the military or the military's designated agent, the applicant shall submit a completed Application for Kentucky Certificate of Title or Registration, TC 96-182 and the supporting documents as required by KRS 186.020 and 186A.070(1).

(3) A military surplus vehicle shall remain designated as a military surplus vehicle after transfer of ownership or sale.

(4) A military surplus vehicle inspected pursuant to subsection (1)(a) of this section shall not be inspected again as an out-of-state vehicle as required by KRS 186A.115.

(5) The county clerk of residence shall issue an original certificate of title without a special brand unless the vehicle was originally branded in another state.

Section 3. Certification. (1) A military surplus vehicle that has been certified as roadworthy pursuant to the vehicle inspection in Section 2(1)(a) of this administrative regulation shall be considered a motor vehicle and shall not require a re-inspection.

(2) A roadworthy military surplus vehicle may be processed through speed title pursuant to KRS 186A.170(1)(b).

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Kentucky Certificate of Title or Registration", TC 96-182, October, 2015; and

(b) "Military Surplus Vehicle Inspection", TC 96-344, July, 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained by accessing the department's Web site at <http://Drive.ky.gov/>.

GREG THOMAS, Secretary  
JOHN-MARK HACK, Commissioner  
D. ANN DANVELO, Office of Legal Services

APPROVED BY AGENCY: October 5, 2017

FILED WITH LRC: October 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2017 at 10:00 a.m. Eastern Time at the Kentucky Transportation Cabinet, Room C-106, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to



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attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. 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: Ann Dangelo, Assistant General Counsel, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-765, fax (502) 564-5238, email Ann.Dangelo@ky.gov

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for titling and registering a military surplus vehicle to operate on Kentucky highways.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide titling and certification information for Kentucky citizens who purchase surplus military vehicles for public road use.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186A.073 requires the cabinet to promulgate administrative regulations to establish the requirements for the titling and registering of motor vehicles.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the regulatory requirements for military surplus vehicles to operate in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Cabinet's Division of Motor Vehicle Licensing, the Department of Vehicle Regulation, and all individuals and businesses intending to operate military surplus vehicles in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for title must submit form TC 96-344 and the requisite attachments to receive a certificate of title and registration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs or fees as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals and businesses that are compliant with the requirements of this administrative regulation will receive a certificate of title and motor vehicle license plates for their vehicles.

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

(a) Initially: There are no costs associated with these amendments.

(b) On a continuing basis: There are no continuing costs associated with these amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road 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: Fees are not necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established by this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all title and registration applications after inspection will be handled the same as any other motor vehicle title and registration application.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 procedures in the Division of Motor Vehicle Licensing and the Department of Vehicle Regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186.020, 186A.073, 186A.115, 49 C.F.R. 571.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not affect expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There would not be any costs associated with the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There would not be any costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (New Administrative Regulation)

#### 701 KAR 8:010. Charter school student application, lottery, and enrollment.

RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.141

STATUTORY AUTHORITY: KRS 160.1591

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1591 requires the Kentucky Board of Education to promulgate an administrative regulation to guide student application, lottery, and enrollment in public charter schools. This administrative regulation sets forth the requirements for charter school student

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application, lottery, and enrollment.

Section 1. Definitions. (1) "Academically behind" means at risk of academic failure.

(2) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(3) "Applicant" is defined in KRS 160.1590(3).

(4) "At risk" means at risk of academic failure.

(5) "At risk of academic failure" means:

(a) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support or intervention;

(b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and improvement;

(c) Current achievement two (2) or more grade levels below the student's age group;

(d) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2) of the past four (4) school years;

(e) Consistent absence or tardy and absence twenty-five (25) or more unexcused student attendance days, as defined in KRS 158.070, in the last two (2) school years and an overall grade average below a C;

(f) Suspension (in-school suspension or home suspension) two (2) or more times during the past school year and an overall grade average below a C;

(g) Family history of dropping out or lack of family support for the student in the completion of school;

(h) Little or no participation in school cocurricular or extracurricular programs;

(i) Below grade level in reading or math skills;

(j) Indication of being socially isolated; or

(k) An applicant's definition for this term in its authorizer approved charter application, pursuant to KRS 160.1594(2).

(6) "Authorizer" or "public charter school authorizer" is defined in KRS 160.1590(13).

(7) "Charter application" is defined in KRS 160.1590(4).

(8) "Charter contract" or "contract" is defined in KRS 160.1590(5).

(9) "Charter school" means a public charter school.

(10) "Charter school board of directors" is defined in KRS 160.1590(6).

(11) "Cocurricular programs" means school programs which have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

(12) "Computerized randomization" means use of a computer software program for randomization.

(13) "Conversion public charter school" is defined in KRS 160.1590(7).

(14) "Days" means calendar days calculated pursuant to KRS 446.030.

(15) "Education service provider" is defined in KRS 160.1590(8).

(16) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(17) "Enrollment" means the process for the charter school to register a student for attendance at the charter school.

(18) "Enrollment preference" means the priority of the student application from students identified in KRS 160.1591(5).

(19) "Extracurricular programs" means voluntary programs that are offered by a school but are not part of the required school program.

(20) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(21) "Human randomization" means randomization without the use of computer randomization.

(22) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(23) "Local school district" is defined in KRS 160.1590(10).

(24) "Lottery" means the transparent, open, equitable, and

impartial process that is competently conducted with randomization in accordance with the targeted student population and service community as identified in KRS 160.1593(3) for the charter school to choose students for enrollment and attendance at the charter school when the student applications received by the charter school exceed the charter school's capacity.

(25) "Multiple" means a person who was born as a result of the same pregnancy as at least one (1) other sibling.

(26) "Notice" means written notice.

(27) "Notify" means provide written notice.

(28) "Parent" is defined in KRS 160.1590(11).

(29) "Persistently low-achieving public schools" or "Persistently low-achieving noncharter public schools" means noncharter public schools identified for comprehensive support and improvement pursuant to KRS 160.346.

(30) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition of KRS 387.010(2) for interested person or entity and with whom the student resides.

(31) "Primary enrollment preference" means any enrollment preference other than a secondary enrollment preference.

(32) "Public charter school" is defined in KRS 160.1590(12).

(33) "Randomization" means to leave to chance alone and eliminate bias and interference.

(34) "Secondary enrollment preference" means the priority of a resident student application for enrollment in a public charter school, after acceptance of all the student applications with primary enrollment preference, if the public charter school's capacity has not been exceeded for that school year.

(35) "Start-up public charter school" is defined in KRS 160.1590(17).

(36) "Student" is defined in KRS 160.1590(19) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(37) "Student application" means an application submitted to a charter school for student enrollment in the charter school.

(38) "Students with special needs" or "Special needs students" means:

(a) Exceptional children and youth students, as defined in KRS 157.200, who are eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. for an individual education plan, as described in KRS 157.196, or an individual education program, as described in KRS 158.281; or

(b) Students who are eligible for services under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 794, to prevent substantial limitation of one or more major life activities.

(39) "Traditionally underperforming" means at risk of academic failure.

(40) "Year" or "academic year" or "school year" means school year as defined in KRS 158.050.

Section 2. Student Application. (1) Any parent, person with custody or charge, adult student, or emancipated youth student who has the ability to enroll the student pursuant to Kentucky law may initiate a student application to a charter school for the student who is eligible for attendance at the charter school under KRS 158.030, 158.100, or 160.1591(5) or (6).

(2) Any adult student or emancipated youth student may initiate the student's own application to a charter school.

(3) A student application for enrollment in a charter school shall list the grade level the parent, person with custody or charge, adult student, or emancipated youth student understands to be the most appropriate grade level for the student based on available information. Any future determination by the resident local school district or the charter school that the student should be placed in a different grade level shall not invalidate the student's application unless the charter school determines that the parent, person with custody or charge, adult student, or emancipated youth student knowingly misrepresented the grade level most appropriate for the student on the student application.

(4) Consent of the parent, person with custody or charge, adult student, or emancipated youth student to serve on the charter school board of directors shall not be a condition for student

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application to the charter school.

(5) The charter school shall not limit the number of applications that it accepts from students based on ethnicity, national origin, religion, sex, income level, disabling condition, proficiency in the English language, or academic or athletic ability, in violation of the Civil Rights Act of 1964, 42 U.S.C. secs. 1981 to 2000h-6, as amended, Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, as amended, KRS 160.1591(5), or 160.1593(19).

(6) For a start-up charter school, the enrollment preference described in KRS 160.1591(5)(d) is only available to:

(a) A child of a Kentucky resident who is on the board of directors and resides within the charter school's enrollment boundaries; or

(b) A child of a Kentucky resident who will be a full-time employee of the charter school and resides within the charter school's enrollment boundaries.

(7) The charter school shall utilize a uniform application process for all student applications, including use of the Kentucky Charter School Student Application.

Section 3. Lottery. (1) A charter school board of directors shall create and publish policies and procedures on its Web site for conducting the lottery that include the following:

(a) Identification and designation of duties for charter school board members, any education service provider, charter school staff, and volunteers prior to the lottery event;

(b) Segregation of duties to decrease the likelihood of errors, mitigate the risk of interference, and increase the public perception that the lottery is a randomized, transparent, open, equitable, and impartial process that is competently conducted;

(c) Provision for breaks during the lottery;

(d) Retention of records from the lottery for two (2) years;

(e) Creation of minutes from the lottery; and

(f) Procedures for receipt, investigation, and handling of written complaints regarding the lottery with concurrent provision of all documents to the authorizer, the commissioner of education, and the Kentucky Board of Education. Procedures shall include:

1. Any remedies the charter school shall provide upon determination that student selection during the lottery was affected by an error committed by individuals acting on behalf of the charter school during the application or lottery processes;

2. Transparency in the charter school's remedying of such an error; and

3. Actions to prevent reoccurrence of errors in the application and lottery processes in future years.

(2) A charter school shall conduct the lottery in compliance with the requirements of KRS 160.1591, 160.1592, 701 KAR Chapter 8, and its policies and procedures, that may include, as allowed by the authorizer:

(a) Selection of numbers assigned to individual students; and

(b) Human randomization or computerized randomization.

(3) The charter school shall afford primary enrollment preferences and secondary enrollment preferences only to students as allowed in KRS 160.1591, 160.1592, and this administrative regulation, as designated in the charter application, and as allowed in the charter contract.

(4) A charter school shall not conduct a lottery for enrollment if the number of student applications does not exceed the capacity of the charter school for that school year, as stated in the charter school's charter contract.

(5) If the number of student applications exceeds the capacity of the charter school for the school year, then pursuant to KRS 160.1591(5)(c), the charter school shall reserve space for enrollment of returning students and then conduct the lottery for the other student applications.

(6) If the number of student applications with enrollment preferences meeting the requirements of subsection (3) of this section exceeds the capacity of the charter school for the school year, the charter school shall include in the lottery for enrollment only those students with enrollment preferences.

(7) Selection in the lottery of a student who is a multiple shall also result in:

(a) The automatic selection of the student's multiple siblings

who have submitted a student application to that charter school for attendance that school year, unless this would exceed the capacity of the charter school; or

(b) If the automatic selection of the student's multiple siblings would exceed the capacity of the charter school for that school year, the automatic placement of the student's multiple siblings at the top of the wait list.

(8) At least thirty (30) days prior to conducting a lottery, the charter school shall publish on its Web site notice of the lottery to provide information on the lottery to parents, persons with custody or charge, adult students, and emancipated youth students. The notice shall include:

(a) The date and location of the lottery and the information meeting to be held prior to the lottery pursuant to subsection (9) of this section;

(b) Information on the legal requirements and policies and procedures utilized in holding the lottery;

(c) Information for filing a written complaint regarding the lottery monitor;

(d) Information for filing a written complaint regarding an error committed by individuals acting on behalf of the charter school during the application or lottery processes; and

(e) Identification of the charter school for the lottery.

(9) At least twenty (20) days prior to conducting a lottery, the charter school shall hold a meeting to provide the lottery information in subsection (8) of this section to parents, persons with custody or charge, adult students, and emancipated youth students.

(10) The authorizer may include in the charter contract a requirement for the charter school to conduct a practice lottery, in the presence of the lottery monitor, to reduce charter school community shareholder concerns, to identify potential issues and perceptions with the selected lottery method, and to build the charter school's capacity to conduct the lottery.

(11) The charter school shall not require the presence of the parent, person with custody or charge, adult student, or emancipated youth student at the lottery for inclusion in the lottery or for eligibility for enrollment.

(12) The charter school shall not require the consent of the parent, person with custody or charge, adult student, or emancipated youth student to serve on the charter school board of directors for inclusion in the lottery or for eligibility for enrollment.

(13) If a charter school determines capacity by grade level, then the charter school shall hold lotteries only in those grade levels where student applications exceeded the charter school's capacity and shall hold separate lotteries, which may occur on the same date, for each of those grade levels. A student shall be eligible for the lottery for the grade level listed on the student's application, unless the charter school and the parent, persons with custody or charge, adult student, or emancipated youth student agree otherwise.

(14) The lottery and the information meeting required in subsection (9) of this section shall each be held in accordance with the Open Meetings Act at a time and location convenient to parents, persons with custody or charge, adult students, and emancipated youth students who have submitted a student application for enrollment in the charter school.

(15) The lottery shall be monitored by a competent, independent, impartial party, the lottery monitor, to ensure compliance with KRS 160.1591 and 160.1592 as follows:

(a) The charter school shall include the identity, qualifications, and affiliations of the lottery monitor in the information they provide to the public thirty (30) days prior to the lottery, pursuant to subsection (8) of this section, and in the lottery information meeting held pursuant to subsection (9) of this section;

(b) Complaints regarding the competence, independence, or impartiality of the lottery monitor shall be provided in writing to the commissioner of education who shall conduct an investigation and render a decision within seven (7) days of receipt of the written complaint; and

(c) If the lottery monitor is determined by the commissioner of education to lack competence, independence, or impartiality, the commissioner of education shall appoint an individual who does

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meet these requirements to serve as a monitor for the lottery selection process.

(16) In the lottery, the charter school shall select students for enrollment up to the capacity of the school for that school year and then the charter school shall select students for inclusion on the wait list above the school capacity as follows:

(a) The charter school shall continue to select students for placement on the wait list until the charter school has exhausted the student applications for that school year;

(b) The charter school shall ensure that lottery drawing for the wait list is separate from the lottery for selection of students for enrollment and that each parent, person with custody or charge, adult student, and emancipated youth student, who submitted a student application to the charter school and is placed on a wait list, is notified in writing of the student's inclusion on the wait list and the student's position on the wait list after the conclusion of the wait list lottery process;

(c) The charter school shall place students on the wait list in the order they are drawn during that portion of the lottery process;

(d) The charter school shall maintain and continuously update accurate records of the order of the wait list;

(e) The charter school shall update the wait list as students are admitted;

(f) The charter school shall weekly publish on its Web site updated information on each student's position on the wait list as well as the last date for enrollment for that year; and

(g) The charter school shall place student applications received after the lottery on the wait list, in the order received, after the students placed on the wait list through the lottery process in this section.

Section 4. Student Enrollment. (1) A charter school shall include in its policies and procedures on student enrollment:

(a) The status of an enrollment preference and eligibility for enrollment and attendance for a student if the student ceases to be a resident of the local school district prior to or during the school year;

(b) The status of an enrollment preference for a sibling under KRS 160.1591(5)(c) if the student who was enrolled the previous school year withdraws from the charter school;

(c) The status of an enrollment preference for a student under KRS 160.1591(5)(d) if the resident ceases to be a member of the board of directors or ceases to be a full-time employee of the charter school prior to or during the school year;

(d) The status of an enrollment preference for a student under KRS 160.1591(5)(e) if the student ceases to be eligible for free or reduced price meals prior to or during the school year; and

(e) The status of an enrollment preference for a student under KRS 160.1591(5)(e) if the student's former school ceases to be a persistently low-achieving public school prior to the school year the student shall attend the charter school.

(2) A charter school shall accept student applications for enrollment and attendance from all local school district resident students who are eligible for enrollment based on KRS 158.030, 158.100, 160.1591(5) or (6) as follows:

(a) Only a student who is a resident of the local school district by the student's first day of student attendance is eligible for enrollment and attendance at the charter school that school year; and

(b) A student who attended the public charter school the previous year shall be automatically re-enrolled for attendance each school year unless:

1. The student has been awarded a high school diploma after meeting or exceeding the minimum requirements for high school graduation set by the Kentucky Board of Education;

2. The charter school has expelled the student pursuant to KRS 158.150;

3. A court has ordered placement of the student in another school or another local school district;

4. The student has voluntarily withdrawn from enrollment in the charter school; or

5. The student is no longer a resident of the local school district.

(3) In addition to the requirements of KRS 160.1592(14), a charter school shall not discourage, restrict, or prohibit enrollment of a student, including based on:

(a) Whether the emancipated youth student, adult student, parent, or person with custody or charge gives consent for the charter school unilaterally to unenroll or withdraw the student from the charter school without providing the due process protections in KRS 158.150;

(b) The student's disability, academic performance, athletic ability, or the ability of the parent or person with custody or charge to volunteer at the charter school;

(c) The student's ability to meet academic minimum requirements;

(d) The student's English competence;

(e) The student's status as a student with special needs;

(f) The student's status as a student at risk of academic failure;

(g) The student's status as a homeless child or youth, under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11301 et seq.; or

(h) The student's eligibility for free or reduced price meals, under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.

(4) In addition to the requirements of KRS 160.1592(14), a charter school shall not:

(a) Require or request

1. An interview prior to enrollment;

2. Letters of recommendation;

3. Essays;

4. Resumes or information regarding a student's school or community activities;

5. Grades;

6. Test scores;

7. Attendance records;

8. Disciplinary history except as allowed pursuant to KRS 158.155;

9. Proof of a Social Security card or number, U.S. birth certificates, visa, or citizenship;

10. Information on the legal residence or presence in the United States of the student, parent, or person with custody or charge; or

11. Information regarding the cause of any student's residency with a person other than the parent; or

(b) Require a family to volunteer at the charter school or provide payment to the school, except:

1. As allowed in KRS 160.1592(14) for fees required on the same basis and to the same extent as other public schools; and

2. The charter school may encourage parental involvement in the charter school as long as involvement is not required and there are no adverse consequences for the family or student who cannot be involved; or

(c) Require or request a parent, person with custody or charge, adult student, or emancipated youth student to consent to the charter school's withdrawal or unenrollment of the student from the charter school without providing the due process protections in KRS 158.150.

(5) A charter school shall enroll a student in compliance with KRS 158.032 and KRS 159.010.

(6) By the first day of a student's attendance, a charter school shall verify the residence of the student within the local school district and use methods similar to those employed by a local school district to verify residence.

(7) A conversion public charter school shall accept for enrollment student applications with secondary enrollment preference after accepting student applications with primary enrollment preference, if the conversion public charter school's capacity has not been exceeded for that school year. After complying with the primary enrollment preference requirement in KRS 160.1591(5)(b), a conversion public charter school may utilize the enrollment preferences in KRS 160.1591(5)(c-e) in enrolling additional local school district resident students pursuant to KRS 160.1591(5)(b).

(8) A charter school shall conduct enrollment as follows:

(a) A charter school shall establish and publish on its Web site

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an open enrollment period during which the charter school shall accept applications for enrollment of new students;

(b) A charter school shall establish and publish on its Web site a specific deadline for notification to parents, persons with custody or charge, adult students, or emancipated youth students of the charter school's acceptance of the student's application for enrollment;

(c) A charter school shall notify parents, persons with custody or charge, adult students, and emancipated youth students with accepted applications of their opportunity to enroll in the charter school and the deadlines and required documentation for enrollment;

(d) A charter school shall establish and publish on its Web site a specific deadline for parents, persons with custody or charge, adult students, or emancipated youth students with accepted applications to notify the school of their enrollment decision and to initiate enrollment of the student in the charter school. Failure of the parent, person with custody or charge, adult student, or emancipated youth student to accept the enrollment offer and enroll the student during the open enrollment period may result in the forfeiture of an enrollment preference and result in enrollment of the student that school year only if capacity of the school has not been exceeded for that school year. Prior to forfeiture of the student's enrollment offer, a charter school shall attempt to enroll the student by again contacting the parent, person with custody or charge, adult student, or emancipated youth student through at least two (2) of the following methods, until successful:

1. Phone;
2. Email;
3. Mailed correspondence; or
4. Home visit; and

(e) A charter school shall allow a parent, person with custody or charge, adult student, or an emancipated youth student to enroll the student for attendance at the charter school in the grade level the parent, person with custody or charge, adult student, or emancipated youth student understands to be the most appropriate grade level based on available information. Any future determination by the resident local school district or the charter school that the student should be placed in a different grade level shall not invalidate the student's enrollment.

(9) A charter school shall only require the following documentation or information for student enrollment:

- (a) Proof of the student's identity and age, as required pursuant to KRS 158.032;
- (b) Immunization records, as required by KRS 158.035;
- (c) Proof of residency in the local school district, as required by the resident local school district;
- (d) Home language survey, as required by 703 KAR 5:070, as a first screening process to identify students who are English learners; and
- (e) Proof of the student's current grade level.

(10) A charter school may request additional information with the consent of the authorizer, but the refusal or failure to provide additional information cannot be a cause for denial of enrollment or for withdrawal of a student.

(11) A charter school shall accept local school district resident student applications and enroll additional local school district resident students for that school year after the end of the open enrollment period if the charter school has capacity to educate additional students at that grade level for that school year.

Section 5. Incorporation by Reference. (1) "Kentucky Charter School Student Application", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS

156.070(5).

STEPHEN L. PRUITT, Ph.D., Commissioner of Education  
MARY GWEN WHEELER, Chair

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2017, at 10 a.m., 300 Sower Blvd, Room 116, Frankfort, Kentucky. 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. 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: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email [kevin.brown@education.ky.gov](mailto:kevin.brown@education.ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation fulfills the regulation promulgation requirement of the agency in KRS 160.1590 to 160.1599 and 161.141.

(b) The necessity of this administrative regulation: KRS 160.1590 to 160.1599 and 161.141 became effective on June 29, 2017. This administrative regulation provides guidance on student application, lottery, and enrollment in public charter schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance on student application, lottery, and enrollment in the public charter schools. This administrative regulation provides guidance from the agency on student application, lottery, and enrollment in the public charter schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations provides guidance from the agency on student application, lottery, and enrollment in the public charter schools. This new administrative regulation provides guidance to facilitate transparent and equitable student application, lottery, and enrollment in the public charter schools, as required by KRS 160.1590 to 160.1599 and 161.141.

(2) If 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: The authorizing statute requires the agency to provide guidance on student application, lottery, and enrollment in the public charter schools.

(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:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

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administrative regulation: School districts, public charter schools, students applying for enrollment in public charter schools, and the Kentucky Department of Education will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts, whose students seek enrollment in public charter schools, should not need to take action related to the lotteries. Public charter schools, who seek to enroll students, will have to create and execute a student lottery as detailed by statute and this regulation. Students, who seek enrollment in a public charter school will have to assure they qualify for lottery entry. The Kentucky Department of Education shall provide support to ensure the transparent and uniform application, lottery, and enrollment of students in public charter schools.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs for school districts should be minimal to none because school districts are already facilitating the transfer of students to other schools. Compliance costs for public charter schools should be minimal to none because this administrative regulation should assist in the organized student application, lottery, and enrollment of students in public charter schools. Same for students and the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation will create one consistent standard for the application, lottery, and enrollment of students in public charter schools.

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

(a) Initially: Compliance costs should be minimal to none.

(b) On a continuing basis: Compliance costs should be minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds and school district funds, and funds provided to public charter schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and all public charter schools.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, public charter schools, and the Department of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1590 to 160.1599 and 161.141.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 should have no impact on the expenditures or revenues for school districts or public charter schools.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation should not impact school district or public charter school revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation should not impact school district or public charter school revenues.

(c) How much will it cost to administer this program for the first year? Administration costs to school districts or public charter schools should be minimal to none.

(d) How much will it cost to administer this program for subsequent years? Administration costs to school districts or public charter schools should be minimal to 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: There should be no fiscal impact resulting from the new administrative regulation.

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (New Administrative Regulation)

#### 701 KAR 8:020. Evaluation of charter school authorizers.

RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.141

STATUTORY AUTHORITY: KRS 160.1596

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1596 requires the Kentucky Board of Education to promulgate an administrative regulation to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance.

Section 1. Definitions. (1) "Academically behind" means at risk of academic failure.

(2) "Achievement gap" is defined in KRS 160.1590(2) and means the same as in KRS 158.649.

(3) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(4) "Applicant" is defined in KRS 160.1590(3).

(5) "Areas of exceptionality" means categories of disabilities of students with special needs.

(6) "At risk" means at risk of academic failure.

(7) "At risk of academic failure" means:

(a) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support or intervention;

(b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and improvement;

(c) Current achievement two (2) or more grade levels below the student's age group;

(d) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2) of the past four (4) school years;

(e) Consistent absence or tardy and absence twenty-five (25) or more unexcused student attendance days, as defined in KRS 158.070, in the last two (2) school years and an overall grade average below a C;

(f) Suspension (in-school suspension or home suspension) two (2) or more times during the past school year and an overall grade average below a C;

(g) Family history of dropping out or lack of family support for the student in the completion of school;

(h) Little or no participation in school cocurricular or extracurricular programs;

(i) Below grade level in reading or math skills;

(j) Indication of being socially isolated; or

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(k) An applicant's definition for this term in its authorizer approved charter application, pursuant to KRS 160.1594(2).

(8) "Authorizer" or "public charter school authorizer" is defined in KRS 160.1590(13).

(9) "Authorizer's board of directors" means:

(a) The board of education for the local school district for an authorizer described in KRS 160.1590 (13)(a); and

(b) The boards of education that have collaborated to set up a regional public charter school for an authorizer described in KRS 160.1590(13)(b).

(10) "Bilingual students" means students who are fluent in English and a foreign language.

(11) "Charter" means charter contract.

(12) "Charter application" is defined in KRS 160.1590(4).

(13) "Charter contract" or "contract" is defined in KRS 160.1590(5).

(14) "Charter school" means a public charter school.

(15) "Charter school board of directors" is defined in KRS 160.1590(6).

(16) "Curricular programs" means school programs which have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

(17) "Comprehensive learning experiences" or "Expanded learning opportunities" means daily, rigorous learning experiences that build on a student's talents, challenge the student's skills and understandings, and develop the student's ability to reason, problem solve, collaborate, and communicate to prepare the student for success in postsecondary.

(18) "Conversion public charter school" or "conversion charter school" is defined in KRS 160.1590(7).

(19) "Days" means calendar days calculated pursuant to KRS 446.030.

(20) "Education service provider" is defined in KRS 160.1590(8).

(21) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(22) "Enrollment preference" means the priority of the student application from students identified in KRS 160.1591(5).

(23) "Extracurricular programs" means voluntary programs that are offered by a school but are not part of the required school program.

(24) "Fiscal year" is defined in KRS 160.450.

(25) "Foreign entity" is defined in KRS 14A.1-070(10).

(26) "Gifted" means a gifted and talented student as defined in KRS 157.200(1)(n).

(27) "Governing board of the authorizer" means the authorizer's board of directors.

(28) "Governing body of the authorizer" means the authorizer's board of directors.

(29) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(30) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(31) "Local school district" is defined in KRS 160.1590(10).

(32) "Parent" is defined in KRS 160.1590(11).

(33) "Persistently low-achieving public schools" or "Persistently low-achieving noncharter public schools" means noncharter schools identified for comprehensive support and improvement pursuant to KRS 160.346.

(34) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition of KRS 387.010(2) for interested person or entity and with whom the student resides.

(35) "Primary enrollment preference" means any enrollment preference other than a secondary enrollment preference.

(36) "Public charter school" is defined in KRS 160.1590(12).

(37) "Regional achievement academy" is defined in KRS 160.1590(15).

(38) "Regional achievement zone" is defined in KRS

160.1590(16).

(39) "School level" or "Level" or "Educational level" means the configuration of grade levels that form elementary, middle, and high schools.

(40) "Secondary enrollment preference" means the priority of a resident student application for enrollment in a public charter school, after acceptance of all the student applications with primary enrollment preference, if the public charter school's capacity has not been exceeded.

(41) "Start-up public charter school" is defined in KRS 160.1590(17).

(42) "Student" is defined in KRS 160.1590(19) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(43) "Student attendance day" is defined in KRS 158.070(1)(e).

(44) "Students with special needs" or "Special needs students" means:

(a) Exceptional children and youth students, as defined in KRS 157.200, who are eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. for an individual education plan, as described in KRS 157.196, or an individual education program, as described in KRS 158.281; or

(b) Students who are eligible for services under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 794, to prevent substantial limitation of one (1) or more major life activities.

(45) "Substantial hardship" means a significant, unique, and demonstrable economic, technological, legal, or other impact on a local school district which impairs its ability to continue to successfully meet the requirements of educational programs or services for its students.

(46) "Superintendent" means the local school district employee tasked with the duties described in KRS 160.370.

(47) "Traditionally underperforming" means at risk of academic failure.

(48) "Unilateral imposition of conditions" means the authorizer has placed conditions or requirements that are not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(49) "Unilaterally imposed conditions" or "Unilateral conditions" or "Conditions unilaterally imposed" means conditions or requirements not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(50) "Year" or "academic year" or "school year" means school year as defined in KRS 158.050.

Section 2. Policies and Procedures. (1) Pursuant to KRS 160.1594, an authorizer shall create policies and procedures governing the authorizer's performance of its duties under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and include in its policies and procedures:

(a) The authorizer's strategic vision for chartering, including a clear statement of any preference for a charter application that demonstrates the intent, capacity, and capability to provide comprehensive learning experiences or expanded learning opportunities to students identified in KRS 160.1594(2) or 160.1592(19);

(b) Identification of any charter application preferences of the authorizer pursuant to KRS 160.1594(2);

(c) Information on the authorizer's performance contracting requirements:

1. Including academic, financial, and operational measures, and the performance frameworks, that the authorizer has developed for public charter school oversight and evaluation and with which the authorizer shall evaluate the charter school's performance under the charter contract, in accordance with KRS 160.1594 and 701 KAR Chapter 8; and

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2. Including requirements for executing a contract with a charter school board of directors that articulates:

- a. The rights and responsibilities of each party regarding school autonomy;
  - b. Funding;
  - c. Administration and oversight;
  - d. Outcomes;
  - e. Measures for evaluating success or failure;
  - f. Performance consequences; and
  - g. Other material terms;
- (d) The evidence the authorizer shall require, the evaluation the authorizer shall conduct using the performance framework, and other aspects of the authorizer's ongoing monitoring of the charter school including:

1. Ensuring a charter school's legally entitled autonomy;
2. Protecting student rights;
3. Informing intervention, revocation, and renewal decisions;

and

4. Providing annual reports as required by KRS 160.1597(5);

(e) The requirements for reporting to the public;

(f) The authorizer's authority to intervene in charter schools, when and if necessary;

(g) Guidelines concerning the format and content essential for an applicant to demonstrate the capacities necessary to establish and operate a public charter school, pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(h) The timeline for submission, review, decision, and appeal for a charter application, and a request for renewal. An authorizer described in KRS 160.1590(13)(c) and (d) shall consult with the superintendent of the resident local school district when planning this timeline;

(i) A template of the assurances an authorizer shall require in a charter contract;

(j) The following evidence sufficiency requirements for the charter application:

1. The charter school board of directors' ability to meet the financial solvency and sustainability demands of their proposed budget;

2. Competent and timely charter school start-up and operation;

3. Foreseen and unforeseen closure; and

4. All debts and obligations during each fiscal year of the charter contract and during the entire contract term;

(k) The financial transparency requirements that will apply to a charter school, including specific provisions regarding publication on the authorizer's website and the charter school's website;

(l) The charter school closure protocol and requirements;

(m) A description of the authorizer's organizational capacity, including its commitment of human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(n) The authorizer's requirements for solicitation and evaluation of a charter application, including its implementation of a comprehensive application process that includes use of the Kentucky Charter School Application and Addendum, and rigorous criteria, and approval of only a charter application that demonstrates a strong capacity to establish and operate a charter school;

(o) The authorizer's charter renewal and revocation processes and rigorous criteria, including its design and implementation of a transparent and rigorous process that uses comprehensive academic, financial, and operational performance data to make merit-based renewal and revocation decisions; and

(p) The requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for an applicant, a board of directors, an education service provider, a charter school, and their employees.

Section 3. Standards of Authorizer Performance Generally. (1) Prior to authorizing a charter school, an authorizer described in KRS 160.1590(13)(c) and (d) shall file the Notice of Intent with the Kentucky Board of Education.

(2) An authorizer shall restrict the expenditure of funds received as a result of charter authorization and oversight to the purpose of fulfilling authorizing obligations pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(3) Pursuant to KRS 160.1596(5)(e), an authorizer shall include in its report and place in a publicly accessible location on its website information on the following:

(a) The oversight and any services provided by the authorizer to the public charter schools under the authority of the authorizer;

(b) The authorizing functions provided by the authorizer to the public charter schools under its jurisdiction, including the operating costs and expenses of the authorizer as detailed in annual audited financial statements that conform to generally accepted accounting principles;

(c) All use of charter authorizing revenue including expenditures, contracts, and revenues, in the format required by the commissioner of education; and

(d) The reports that an authorizer is required to make pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) The authorizer, or its designee for charter authorizing, shall participate in annual training as follows:

(a) Each authorizer or member of the authorizer's board of directors shall complete:

1. Nine (9) hours of annual training, with six (6) additional hours of training for new authorizers and new members; or

2. Competency-based annual training;

(b) The training shall include the following topics of authorizer responsibility and charter school formation and operation:

1. Financial governance and transparency;

2. Conflict of interest;

3. Charter application;

4. Charter school contracting;

5. Charter school monitoring;

6. Charter school renewal, nonrenewal, and revocation;

7. Charter school closure; and

8. Ethics; and

(c) The training shall be approved by the commissioner of education.

(5) An authorizer shall submit to the department a written assurance of a charter school's compliance with the pre-operating requirements in this administrative regulation and in the charter contract before the opening of the charter school.

(6) An authorizer shall require the sharing of best practices between the charter school and the resident local school district.

Section 4. Standards of Authorizer Performance Concerning Charter Applications. (1) Pursuant to KRS 160.1591 and 160.1594(1)(e)2 and to the extent not prohibited by federal law, an authorizer shall not approve a charter application that is:

(a) From an applicant that is or includes:

1. A for-profit organization, or its designee;

2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A; or

(b) That has in the proposed board of directors:

1. A for-profit organization, or its designee;

2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A.

(2) An authorizer shall require a charter application to be submitted on the Kentucky Charter School Application and Addendum and may require additional information from the applicant.

(3) An authorizer shall publish a copy of a submitted charter application on its website within three (3) days of submission by the applicant to the authorizer.

(4) An authorizer shall provide a copy of a submitted charter



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application to the resident local school district superintendents and to any other authorizer of charter schools in that local school district within three (3) days of submission by the applicant to the authorizer.

(5) An authorizer described in KRS 160.1590(13)(a) or (b) shall provide a copy of a submitted charter application for a regional achievement academy within a regional achievement zone to the superintendents of the other local school districts of the regional achievement zone within three (3) days of submission by the applicant to the authorizer.

(6) An authorizer shall allow a resident local school district superintendent to file a letter with supporting evidence objecting to the approval of the charter application on the basis of the substantial hardship that may result for the students of the resident local school district who do not attend the charter school. An authorizer shall publish a copy of the letter and supporting evidence from the resident local school district superintendent on the authorizer's website within three (3) days of submission by the superintendent to the authorizer and the authorizer shall review this evidence prior to approving a charter application.

(7) An authorizer shall allow a resident local school district superintendent to file a letter of support for a charter application and shall publish a copy of the resident local school district superintendent letter on the authorizer's website within three (3) days of submission by the superintendent to the authorizer.

(8) An authorizer shall require a resident local school district superintendent to provide information and evidence regarding the academic performance of the students identified in the charter application as the targeted student body or community. An authorizer shall publish a copy of this information on the authorizer's website within three (3) days of submission by the superintendent to the authorizer, to the extent not prohibited by confidentiality laws.

(9) An authorizer shall comply with the following requirements in reviewing the charter application:

(a) Request and secure a certificate of existence from the Secretary of State, pursuant to KRS 14A.2-130, for any business entity or its designee included in the applicant or in the proposed charter school board of directors; and

(b) If the applicant or the board of directors includes a foreign entity, request and secure a certificate of authorization for the foreign entity from the Secretary of State, pursuant to KRS 14A.2-140.

(10) The department shall develop a charter application scoring rubric that an authorizer may utilize in reviewing a charter application.

(11) An authorizer shall require an applicant or proposed board of directors for a charter school to include in the charter application the following:

(a) Performance information, financial information, and closure information for any charter school under the applicant or board of directors;

(b) Details and documentation of the outreach the applicant or proposed board of directors has had with the students or community that is the focus of the charter application; and

(c) Details of whether the charter application replicates or substantially replicates:

1. A charter application that the applicant, the proposed board of directors, or another entity previously withdrew from consideration and the reasons the charter application was withdrawn;

2. A charter application that was rejected by an authorizer and the reasons the charter application was rejected; or

3. A charter school that was previously closed and the reasons for the closure.

(12) An authorizer shall provide on the authorizer's website the names of all persons, and their roles, who are involved in the review of charter applications. Review of charter applications shall be conducted pursuant to the requirements of the Open Meetings Act.

(13) An authorizer shall not approve a charter application that does not meet the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(14) Within five (5) days of the authorizer's approval, the authorizer shall submit an approved charter application to the commissioner of education for review and approval commensurate with Section 5(11) of this administrative regulation.

Section 5. Standards of Authorizer Performance Concerning Charter Contracts. (1) Prior to negotiating a charter contract with a board of directors, an authorizer shall verify the charter school board of directors' registration as a non-profit business entity with the Kentucky Secretary of State pursuant to KRS Chapter 14A.

(2) An authorizer shall negotiate and enter a charter contract with a charter school board of directors in compliance with KRS 160.1590(5) and (6); 160.1591(2); 160.1592(3), (7), (8), (9), (10), (11), and (20); 160.1593(3); 160.1594(1); 160.1596(1); 160.1597(1), (2), and (6); 160.1598(1), (5), (6), and (7).

(3) An authorizer shall include pre-opening requirements or conditions in the charter contract as follows:

(a) An authorizer shall establish mutually agreed upon pre-opening requirements or conditions to:

1. Monitor the start-up progress of a newly approved public charter school;

2. Ensure that the charter school is prepared to open timely and smoothly on the date agreed; and

3. Ensure that the charter school meets all benchmarks related to facilities, health, safety, insurance, school personnel, enrollment, curriculum and instruction, operations and fiscal management, governance, and other legal requirements for the charter school opening; and

(b) Failure by the charter school to comply with the pre-opening requirements or conditions may result in the immediate revocation of the charter contract and:

1. May result in the delay in the opening of the charter school by up to one (1) year if the authorizer does not determine that the charter school is more likely than not to close during the school year; or

2. Shall result in the delay in the opening of the charter school by up to one (1) year if the authorizer does determine that the charter school is more likely than not to close during the school year.

(4) An authorizer shall include in the charter contract with the charter school board of directors provisions for charter school financial solvency and sustainability, including:

(a) A requirement that no member of the charter school board of directors, no education service provider, and no charter school employee shall knowingly recommend and no member of the charter school board of directors shall knowingly vote for an expenditure in excess of the charter school's income and revenue of any fiscal year, as shown by the budget adopted by the charter school board of directors and approved by the authorizer;

(b) A requirement that a member of the charter school board of directors, an education service provider, or a charter school employee who knowingly expends or authorizes the expenditure of charter school funds or who knowingly authorizes or executes any employment, purchase, or contract, in violation of this section, shall be jointly and severally liable in person and upon any official fidelity bond given to the authorizer to the extent of any payments on the void claim; and

(c) A requirement that, if at any time during any fiscal year of the charter school's existence, a member of the charter school board of directors, an education service provider, or a charter school employee knows or reasonably should know that the charter school has or will become unable to pay in full its projected expenses as they fall due, the charter school shall immediately so advise the department and the authorizer, and shall provide the department and the authorizer with all financial information relating to revenues and expenses of the charter school necessary for the department and the authorizer to determine the extent and cause of any potential operating deficit. If the member of the charter school board of directors, the education service provider, or the charter school employee fails to provide the notice to the department and the authorizer required by this subsection or fails to cooperate with the department and the authorizer in the production of financial information pursuant to this subsection:

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1. The authorizer shall determine whether grounds exist to revoke the charter contract; and

2. The knowingly acting member of the charter school board of directors, the education service provider, or the charter school employee may be subject to the liability described in paragraph (4)(b) of this section.

(5) An authorizer shall include in the charter contract the specific, exclusive reasons and timelines for closure initiated by the charter school board of directors, and the closure protocol and policies and procedures applicable to closure of the charter school.

(6) An authorizer shall require in the charter contract the closure requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(7) An authorizer shall require in the charter contract that the charter school shall not prohibit a student from attending and shall not unenroll or withdraw a student unless the charter school has complied with KRS 158.150.

(8) An authorizer shall require in the charter contract that the charter school board of directors maintain separate accountings of all funds received and disbursed by each charter school under the charter school board of directors.

(9) An authorizer shall require in the charter contract that any contract the charter school board of directors enters with an education service provider has to be approved by the authorizer prior to execution and that any contract the charter school board of directors enters with an education service provider shall comply with the following:

(a) Clearly establish the primacy of the charter contract over the contract between the charter board of directors and the education service provider;

(b) Clearly identify the charter school board of directors as the party ultimately responsible for the success or failure of the charter school, and clearly define the education service provider as a vendor of services;

(c) Prohibit the education service provider from selecting, approving, employing, compensating, or serving as members of the charter school board of directors;

(d) Require the charter school board of directors to directly select, retain, and compensate the charter school's legal counsel, finance staff, audit firm, and school leader;

(e) Provide for payments to the charter school to be made to an account controlled by the charter school board of directors, not the education service provider;

(f) Require all instructional materials, furnishings, and equipment purchased or developed with charter school funds be the property of the charter school, not the education service provider;

(g) Identify and describe the roles and responsibilities of the charter school board of directors and the education service provider, including all services to be provided under the contract between the charter school board of directors and the education service provider;

(h) Identify and describe the performance measures and consequences by which the charter school board of directors shall hold the education service provider accountable for performance, aligned with the performance measures in the charter contract;

(i) Identify and describe with specificity all compensation to be paid to the education service provider, including all fees, bonuses, and the conditions, consideration, and restrictions on such compensation;

(j) Identify and describe the terms of any facility agreement that may be part of the relationship between the charter school board of directors and the education service provider;

(k) Identify and describe financial reporting requirements and provisions for the charter school board of directors' financial oversight of the education service provider and the charter school;

(l) Identify and describe all other financial terms of the contract, including disclosure and documentation of all loans or investments by the education service provider to the charter school board of directors, and provision for the disposition of assets upon closure in accordance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(m) Include assurances that the charter school board of

directors, at all times, shall maintain independent fiduciary oversight and authority over the charter school budget and ultimate responsibility for the charter school's performance;

(n) Include provisions for contract termination without penalties for the charter school and without costs beyond the pro-rated value of the services provided by the education service provider;

(o) Assure:

1. That the charter school board of directors shall be structurally independent from the education service provider and shall set and approve charter school policies;

2. That the terms of the contract between the charter school board of directors and the education service provider are reached through arm's-length negotiations in which the charter school board of directors is represented by legal counsel that does not also represent the education service provider; and

(p) Identify and describe the respective responsibilities of the charter school board of directors and the education service provider in the event of school closure.

(10) An authorizer shall prohibit a charter school board of directors, in the charter contract, from delegating the charter school board of directors' responsibilities in subsection (9) of this section to the education service provider.

(11) No authorizer shall enter a charter contract for start-up, conversion, or renewal of a charter school, or agree to any charter contract amendment, unless the charter contract or amendment is approved by the commissioner of education as follows:

(a) An authorizer shall provide the commissioner of education a copy of a proposed charter contract or proposed amendment;

(b) Within fifteen (15) days of receipt of the proposed charter contract or amendment from the authorizer, pursuant to KRS 160.1594(9), the commissioner of education shall provide to an authorizer and the charter school board of directors approval of the contract or:

1. The reasons for a denial and any suggestions for remedy of these reasons; and

2. Notice of the opportunity for resubmission of the remedied contract or amendment to the commissioner of education; and

(c) Any failure to meet the commissioner of education's requirements for approval shall render the charter contract or its amendment void.

Section 6. Standards of Authorizer Performance Concerning Charter School Monitoring. (1) An authorizer, that determines a charter school board of directors has governance over more than one (1) charter school and has failed to meet the requirements of KRS 160.1592, shall commence an investigation to determine if the charter school board of directors is in compliance with the charter contracts for every other charter school under the authorizer's jurisdiction.

(2) An authorizer shall monitor the performance of the charter contract by a charter school board of directors, and any educational service provider. If the authorizer believes there is an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, the authorizer shall commence an investigation.

(3) An authorizer that verifies an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the commissioner of education and may request assistance from the commissioner of education in addressing and remedying the issue.

(4) An authorizer that verifies an issue with any aspect of the performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the charter school of the issue and take necessary action, including unilateral imposition of conditions on the charter school, revocation, or nonrenewal of the charter contract, to resolve the issue and to provide notice of the issue and the resolution to the charter school's adult students, emancipated youth students, parents, persons with custody or charge, and the department.

(5) An authorizer shall at least monthly review the financial

budget reports of the charter school and take the following action:

(a) If the budget projections indicate that the charter school's annual operating expenses may at any time during the school year cause the annual operating revenues to fall below two (2) percent of the total projected annual operating revenues included in the school's approved budget, the charter school shall provide specific notice of this to the authorizer and the authorizer shall:

1. Require the charter school to implement a cash management plan approved by the authorizer;
2. Commence a more in-depth review, and an audit if necessary, of the charter school's financial budget reports, expenditures, and revenues;
3. Request financial management assistance for the charter school from the department; and
4. Restrict the charter school's expenditures and require the authorizer's approval prior to expenditure of charter school funds for the remainder of the school year; and

(b) If the charter school defaults on a financial obligation or if the authorizer otherwise suspects the charter school may close prior to the end of the school year or the charter contract term, the authorizer shall:

1. Consult with the commissioner of education;
2. Communicate with the charter school board of directors to determine the need for charter contract revocation;
3. Commence actions under (a) above;
4. Review the closure protocol;
5. Review the charter contract termination provisions;
6. Communicate with the charter school board of directors regarding the closure protocol and contract provisions for termination; and
7. Notify students and resident local school districts, as necessary.

(6) An authorizer shall revoke the charter contract and determine the timeline for closure if the authorizer determines the charter school:

- (a) Is financially insolvent;
- (b) Is financially unsustainable for the remainder of the school year or the charter contract term; or
- (c) Has violated or threatened the health and safety of the students of the public charter school, pursuant to KRS 160.1598(7).

(7) The department shall develop a charter contract performance framework that an authorizer may utilize in developing a charter contract performance framework. In addition to the requirements of KRS 160.1596, the authorizer's charter contract performance framework shall include academic, financial, and organizational performance frameworks, and targets in the following areas:

- (a) Student assessment and accountability;
- (b) Student graduation rates;
- (c) Student promotion rates;
- (d) Student attendance rates;
- (e) Student admission and enrollment in postsecondary institutions; and
- (f) Other outcomes.

Section 7. Standards of Authorizer Performance Concerning Charter Approval, Revocation, Renewal, and Nonrenewal. (1) An authorizer shall not approve a charter application, contract with, or renew a contract with a charter school board of directors for a charter school that:

- (a) Does not operate:
  1. A breakfast program under the Child Nutrition Act of 1966, 42 U.S.C. 1773, as amended (CNA), and a lunch program under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq. (NSLA); or
  2. A breakfast and lunch program with provision of meals at no cost to students who qualify for free meals under the CNA and NSLA and with the provision of meals at a reduced cost to students who qualify for reduced price meals under the CNA and NSLA; or
- (b) Does not provide initial and continuing evidence and assurances of the charter school's financial solvency and financial sustainability, as demonstrated initially by the financial plan in the

charter application, to cover the expenses of start-up or conversion, operation, and any foreseen or unforeseen closure of the charter school during the fiscal year or during the contract term.

(2) An authorizer shall require for approval of a charter application, for contracting with a charter board of directors, for performance of a charter contract, and for renewal of a charter contract, the following:

- (a) Inclusion of at least two (2) local school district resident parents or persons with custody or charge of local school district resident students who will attend the charter school in a charter school board of directors;
- (b) Exercise by a charter school board of directors of their authority in KRS 160.1592(3)(p)4 and 5 only as allowed for a local board of education in KRS 160.540;

(c) Participation of all members of a charter school board of directors in annual training, approved by the commissioner of education, on topics of charter school governance and operation including financial governance and transparency, conflict of interest, and ethics. Fulfillment of this requirement shall occur through:

1. Nine (9) hours of annual training, with six (6) additional hours of training for new charter school board members and members of newly-approved charter schools during the first year after approval; or
2. Competency-based annual training;

(d) Attendance by the authorizer, or its designee for authorizing, or at least one (1) member of the authorizer's board of directors at any due process hearing conducted pursuant to KRS 158.150 to suspend or expel a charter school student. A charter school board of directors, with the consent of the parent, person with custody or charge, adult student, or emancipated youth student, and as otherwise allowed by confidentiality laws, may invite the resident local district superintendent to attend the due process hearing and to provide information to the charter school board of directors as to the educational services the resident local school district would provide the student:

1. If the student is expelled from the charter school; and
2. If the charter school board of directors determines, on the record and supported by clear and convincing evidence that the charter school cannot provide or assure that educational services are provided to the student in an appropriate alternative program or setting because the expelled student posed a threat to the safety of other students or school staff and could not be placed into a state-funded agency program;

(e) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of the Individual with Disabilities Education Act dispute resolution procedures, 707 KAR 1:340, regarding a student attending a charter school or the services provided by a charter school;

(f) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of physical restraint or seclusion of charter school students;

(g) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of allegations received or substantiation of violation of any health, safety, civil rights, and disability rights of students, staff, or parents or persons with custody or charge;

(h) Pursuant to KRS 160.1592(14), adherence by the charter school board of directors, and any education service provider, to the requirements of KRS 160.330 and 702 KAR 3:220 for the waiver of fees for students eligible for free or reduced price lunch;

(i) Provision, to the authorizer and to the public by the charter school board of directors and any education service provider, updates on the charter school's performance of the charter contract, according to the charter contract and performance framework;

(j) Restriction on expenditure of charter school resources and funds for school purposes only;

(k) Prohibition on the expenditure of charter school resources and funds in excess of the fair market value of the product, service, or consideration received;

(l) Prohibition on the disposal of charter school resources for less than the fair market value of the resource disposed;

(m) Restriction on the addition or moving of any location of the charter school without the written consent of the authorizer and amendment of the charter contract; and

(n) Provision, to the authorizer by the charter school board of directors and any education service provider, of student enrollment and attendance records and data at least monthly during the school year.

(3) An authorizer shall revoke, effective at the end of the school year, a charter contract for any of the reasons in KRS 160.1598(6).

(4) An authorizer shall require continuous enrollment at a charter school of at least eighty (80) percent of the charter contract minimum student enrollment requirements and shall monitor and take action as follows:

(a) The charter school shall provide reports to the authorizer on student enrollment and attendance at least twice a month; and

(b) Failure of the charter school to maintain this continuous, minimum student enrollment shall result in an immediate review by the authorizer of:

1. The charter school's operations;
2. The charter school's financial solvency;
3. The charter school's financial sustainability through the end of the school year and the end of the charter contract term;
4. The potential for closure;
5. Violation of the charter contract; and

6. The need for imposition of unilateral conditions, amendment, nonrenewal, or revocation of the charter contract, or immediate revocation of the charter contract pursuant to KRS 160.1598(7).

(5) An authorizer shall not approve a charter application for a start-up public charter school or conversion charter school if the applicant or proposed member of the board of directors has been previously found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, and the authorizer shall ensure compliance with this requirement as follows:

(a) The authorizer shall consult with the Kentucky Board of Education's designated agency to ensure compliance with this requirement;

(b) The Kentucky Board of Education's designated agency may provide copies of its relevant written reports described in 702 KAR 7:065 Section 3(17) to the authorizer; and

(c) If the authorizer does determine a member of the applicant or the proposed board of directors has previously been found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, the authorizer may only approve a charter application, contract with, or renew a charter for a start-up public charter school or conversion charter school that does not sponsor interscholastic athletic activities, unless the charter school's sponsorship of interscholastic athletic activities is approved by the Kentucky Board of Education.

(6) An authorizer shall remove a member of a board of directors that has been convicted of a crime described in KRS 61.040 and remove any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure when the member or members threaten the health, safety, civil rights, or disability rights of the students or the community pursuant to KRS 160.1598(11).

(7) An authorizer shall revoke or nonrenew a charter school contract if the commissioner of education has determined a member of the board of directors, or an education service provider at the direction of a member of the board of directors, or an employee at the direction of a member of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Assessment Program or KRS 160.1592(3)(g), for a student assessment included in:

- (a) The performance framework of the charter contract; or
- (b) The state accountability system.

(8) For issues in a charter school's performance that do not require immediate action by the authorizer, as stated in KRS 160.1590 to 160.1599, and 701 KAR Chapter 8, or otherwise to

protect the health, safety, civil rights, disability rights, and well-being of students and the community, an authorizer may utilize a progressive system of monitoring consequences including notices of deficiencies or conditions unilaterally imposed on the charter school prior to revocation or nonrenewal. An authorizer shall share publicly a notice of deficiency or a condition unilaterally imposed on the charter school as well as the underlying charter school performance issue and shall provide a copy to the commissioner of education and to the Kentucky Board of Education.

(9) An authorizer shall comply with the following prior to approving a charter application for a charter school or renewing a charter school contract:

(a) Holding in the resident local school district a public hearing to allow for public comment on the charter application; and

(b) Allowing public comment to be submitted in writing prior to the hearing, or oral or written public comment at the hearing and allowing comment at the public hearing by a resident superintendent who has filed an objection to the charter application.

Section 8. Standards of Authorizer Performance Concerning Charter Closure. (1) An authorizer's charter school closure protocol shall include the following:

(a) Provision, to the authorizer by the charter school, of contact information and resident local school district information for all parents, persons with custody or charge, adult students, and emancipated youth students;

(b) Notification to all parents, persons with custody or charge, adult students, and emancipated youth students of the following:

1. The closure decision;
2. The closure process;
3. Information on student instruction and reassignment;
4. Information on courses, levels, and credits completed by the student;

5. Information on the process for obtaining a copy of the student's education records; and

6. Contact information for additional information;

(c) Notification to the resident local school districts and the department of the following:

1. The closure decision;
2. The closure date;
3. The closure process;
4. Availability and timeline for appeals and their intersection with the closure protocol;

5. A copy of the notification provided to charter school parents, persons with custody or charge, adult students, and emancipated youth students;

6. Information on student instruction and reassignment; and

7. Contact information for additional information;

(d) Budget review and revision to limit expenditures to only those in the approved budget required for fulfilling the obligations through closure;

(e) Communication of the budget information to parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and the Kentucky Board of Education;

(f) Meeting of the authorizer with the charter school board of directors and charter school employees to notify and coordinate the following:

1. The closure;
2. The closure process;
3. The closure timeline and dates;
4. Information on student instruction and reassignment;
5. Employment, payroll, and benefits information;
6. Transfer of federal and state funds and assets according to the federal and state requirements; and
7. Contact information for additional information;

(g) Additional and final notification to parents and resident local school districts, including the following:

1. Information on the existence and role of any appeal of the closure;
2. Identifying the last student attendance day;
3. Detailing end of the year activities and transition activities for

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students; and

4. Providing information and assistance for reassignment of students;

(h) Procedures and requirements for establishment of transition teams, development of closure plan, and assignment of roles for closure;

(i) Procedures and requirement for scheduling closure meetings with the transition team, parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and employees;

(j) Procedures and requirements for a final report from the charter school board of directors to the authorizer and the department detailing completion of the closure plan;

(k) Maintenance of the charter school facilities;

(l) Identification and notification of all creditors and debtors of the board of directors and the Teachers' Retirement System and the County Employees Retirement System;

(m) Notification of federal, state, local, and private grantors;

(n) Termination of any contract with an education service provider;

(o) Accounting, inventory, and protection of assets;

(p) Notification of employee benefit providers;

(q) Notification of all contractors and termination of all contracts;

(r) Transfer of student and personnel records;

(s) Notification of the IRS;

(t) Issuance of final grades to students;

(u) Dissolution of the charter school;

(v) Maintenance of records; and

(w) Completion of an independent final audit within six (6) months of the closure of the charter school that may function as the annual audit, and that includes at least the following:

1. An accounting of all financial assets, including cash and accounts receivable and an inventory of property, equipment, and other items of material value;

2. An accounting of the liabilities, including accounts payable and any reduction in apportionments as a result of audit findings or other investigations, loans or grants, and unpaid staff compensation; and

3. An assessment of the disposition of any restricted funds received by or due to the charter school.

(2) An authorizer's charter school closure protocol shall include the following regarding distribution of assets upon closure:

(a) The assets of the charter school, if sufficient to satisfy all the outstanding debts of the charter school, shall be distributed in the following order:

1. To satisfy outstanding payroll obligations for employees of the public charter school;

2. To creditors of the charter school; and

3. To the resident local school districts, in direct proportion to the percentage of the charter school student body that will be returning to each resident local school district after closure;

(b) If the assets of the public charter school are insufficient to satisfy all debts of the charter school, the prioritization of the distribution of assets may be determined by a court of law; and

(c) A charter school board of directors shall distribute its assets within six (6) months of closure of the charter school, unless granted an extension by the authorizer or ordered otherwise by a court of law.

(3) The commissioner of education, upon request by the authorizer, may appoint an independent third party, paid from the charter school's funds, to manage the closure with assistance from the department. The commissioner of education may remove an appointed independent third party for cause and appoint a replacement.

(4) The department shall develop a charter closure protocol guide that an authorizer may utilize in developing the closure protocol.

Section 9. Investigation of an Authorizer. (1) The Kentucky Board of Education shall conduct a special review of an authorizer as follows:

(a) If there is persistently unsatisfactory performance of the

portfolio of the public charter schools of the authorizer;

(b) If there is a pattern of well-founded complaints about the authorizer or its public charter schools; or

(c) If the Kentucky Board of Education finds other objective circumstances warranting investigation.

(2) The Kentucky Board of Education shall request investigation by the commissioner of education.

(3) In reviewing and evaluating the performance of an authorizer, the Kentucky Board of Education shall apply nationally recognized standards for quality in charter authorizing, in addition to the standards of performance included in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) If at any time the Kentucky Board of Education determines that an authorizer is not in compliance with an existing charter contract or the requirements for an authorizer, the Kentucky Board of Education shall either:

(a) Notify the authorizer in writing of any identified problem and the authorizer shall have a reasonable opportunity to respond and remedy the problem; or

(b) If deemed necessary, take action against the authorizer under Section 10.

Section 10. Consequences. (1) The Kentucky Board of Education may, in addition to its authority over authorizers and their action on a charter application, renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter school pursuant to KRS 160.1595(1), place an authorizer on probation and require the following during probation of an authorizer:

(a) Additional training for the authorizer;

(b) Meeting with the commissioner of education to provide status reports and solicit feedback on charter school performance during a charter contract;

(c) Written and in-person status reports to the Kentucky Board of Education on the authorizer's monitoring of charter schools and other authorizing activity;

(d) Approval by the commissioner of education on the authorizer's monitoring activities, imposition of unilateral conditions, and revocation decisions;

(e) Approval of the Kentucky Board of Education for any renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter contract; and

(f) Any other consequences the Kentucky Board of Education deems necessary to ensure compliance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(2) The Kentucky Board of Education shall set the length and extent of the probation of the authorizer's authority and reporting requirements for the authorizer to report on the progress of the charter schools authorized by the authorizer.

(3) The Kentucky Board of Education shall state in its order probating the authority of the authorizer the following:

(a) The extent of the probation of the authorizer's authority;

(b) The length of the probation of the authorizer's authority;

(c) The grounds under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for the probation of the authorizer's authority; and

(d) The anticipated changes that would have to occur for the Kentucky Board of Education to consider ending the probation of the authorizer's authority under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) The Kentucky Board of Education may entertain a request by the authorizer for termination of the probation if the authorizer submits, at least forty-five (45) days prior to the Kentucky Board of Education's regular meeting, the following:

(a) The authorizer's request for ending the probation; and

(b) The authorizer's evidence of:

1. Its efforts to correct the grounds for the probation of its authorizing authority;

2. The changes required in the Kentucky Board of Education's order; and

3. Its plan to ensure future compliance with the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

Section 11. Statewide Evaluation of Public Charter School Authorizers. (1) Beginning with the conclusion of the 2018-2019 fiscal year, the department shall provide an annual report on the state's public charter school authorizers and their charter schools to the Governor, the Interim Joint Committee on Education, the secretary of the Education and Workforce Development Cabinet, and the public that includes information from the annual reports submitted by every authorizer as well as any additional relevant data compiled by the department.

(2) The annual report shall include:

(a) For all public charter schools in the state, by individual charter school, and by authorizer:

1. The academic performance;
2. The number of students enrolled, withdrawn, suspended, and expelled;
3. Financial audit results;
4. Financial solvency and sustainability for the fiscal year and the contract term; and
5. Closure information;

(b) A comparison of the performance and growth of public charter school students with the performance and growth of comparable groups of students in noncharter public schools;

(c) A detailed update on the authorizing process;

(d) Recommendations for adjustments to public charter school governance and oversight; and

(e) The department's assessment of the successes, challenges, and areas for improvement in meeting the purposes of KRS 160.1591, including the department's recommendations as to any suggested changes in state law or policy necessary to strengthen the state's public charter schools.

Section 12. Incorporation by Reference. (1) "Kentucky Charter School Application and Addendum", February 2018, is incorporated by reference.

(2) "Notice of Intent", February 2018, is incorporated by reference.

This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, Ph.D., Commissioner of Education  
MARY GWEN WHEELER, Chair

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2017, at 10 a.m., 300 Sower Blvd, Room 116, Frankfort, Kentucky. 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. 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: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email [kevin.brown@education.ky.gov](mailto:kevin.brown@education.ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation fulfills the regulation promulgation requirement of the agency in KRS 160.1590 to 160.1599 and 161.141.

(b) The necessity of this administrative regulation: KRS 160.1590 to 160.1599 and 161.141 became effective on June 29, 2017. This administrative regulation provides guidance on the evaluation of authorizer performance for authorizers of public charter schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance on evaluation of authorizer performance for authorizers of public charter schools. This administrative regulation provides guidance from the agency on evaluation of authorizer performance for authorizers of public charter schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance from the agency on evaluation of authorizer performance for authorizers of public charter schools. This new administrative regulation provides guidance to facilitate transparent and equitable evaluation of authorizer performance for authorizers of public charter schools, as required by KRS 160.1590 to 160.1599 and 161.141.

(2) If 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: The authorizing statute requires the agency to provide guidance on evaluation of authorizer performance for authorizers of public charter schools.

(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:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, public charter schools, students applying for enrollment in public charter schools, and the Kentucky Department of Education will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Authorizers of public charter schools. The Kentucky Department of Education shall provide support to ensure the transparent and uniform evaluation of authorizer performance for authorizers of public charter schools.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs for school districts should be minimal to none because school districts are already facilitating the transfer of students to other schools. Compliance costs for public charter schools should be minimal to none because this administrative regulation should assist in the organized student application, lottery, and enrollment of students in public charter schools. Same for students and the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation will create standards for evaluation of authorizer performance for authorizers of public charter schools

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

(a) Initially: Compliance costs should be minimal to none.

(b) On a continuing basis: Compliance costs should be minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds and school district funds, and funds provided to public charter schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and all public charter schools.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, public charter schools, and the Department of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1590 to 160.1599 and 161.141.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 should have no impact on the expenditures or revenues for school districts or public charter schools.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation should not impact school district or public charter school revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation should not impact school district or public charter school revenues.

(c) How much will it cost to administer this program for the first year? Administration costs to school districts or public charter schools should be minimal to none.

(d) How much will it cost to administer this program for subsequent years? Administration costs to school districts or public charter schools should be minimal to 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: There should be no fiscal impact resulting from the new administrative regulation.

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (New Administrative Regulation)

#### 701 KAR 8:030. Charter school appeal process.

RELATES TO: KRS Chapter 13B, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599

STATUTORY AUTHORITY: KRS 160.1598

NECESSITY, FUNCTION, AND CONFORMITY: KRS

160.1598 requires the Kentucky Board of Education to promulgate an administrative regulation to establish the process to appeal a decision of an authorizer denying a charter application or a charter contract amendment request, unilaterally imposing conditions on the applicant or charter school, or revoking or nonrenewing a charter contract. This administrative regulation provides the requirements for the appeal process.

Section 1. Definitions. (1) "Appellant" means the applicant or charter school board of directors filing the appeal of an authorizer's decision denying a charter application or a charter contract amendment request, unilaterally imposing conditions on the applicant or charter school, or revoking or nonrenewing a charter contract.

(2) "Applicant" is defined in KRS 160.1590(3).

(3) "Authorizer" or "public charter school authorizer" is defined in KRS 160.1590(13).

(4) "Charter" means charter contract.

(5) "Charter application" is defined in KRS 160.1590(4).

(6) "Charter contract" or "contract" is defined in KRS 160.1590(5).

(7) "Charter school" means a public charter school.

(8) "Charter school board of directors" is defined in KRS 160.1590(6).

(9) "Days" means calendar days calculated pursuant to KRS 446.030.

(10) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(11) "Local school district" is defined in KRS 160.1590(10).

(12) "Notice" means written notice.

(13) "Notify" means provide written notice.

(14) "Public charter school" is defined in KRS 160.1590(12).

(15) "Unilateral imposition of conditions" means the authorizer has placed conditions or requirements that are not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(16) "Unilaterally imposed conditions" or "Unilateral conditions" or "Conditions unilaterally imposed" means conditions or requirements not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

Section 2. Policies and Procedures. (1) The authorizer shall create and publish on its website policies and procedures for its implementation of KRS 160.1595 and 160.1598 as follows:

(a) The authorizer shall include in its policies and procedures a rubric for its evaluation of a charter application and its rubric for evaluation of charter contract performance for renewal;

(b) The authorizer shall publish on its website its policies and procedures, including any rubric for evaluation of charter contract performance for renewal under KRS 160.1598;

(c) The authorizer shall include in its policies and procedures the circumstances that shall result in automatic revocation or nonrenewal of a charter contract, only as allowed in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(d) The authorizer shall include in its policies and procedures the requirements and timeline for timely notification of the prospect of revocation or nonrenewal of the charter contract and of the reasons for such possible closure;

(e) The authorizer shall include in its policies and procedures the reasonable deadline and requirements for a charter school's opportunity to respond to the authorizer's notice of the prospect of revocation or nonrenewal of the charter contract; and

(f) The authorizer shall include in its policies and procedures the requirements for appeal of an authorizer decision denying a charter application or a charter amendment request, nonrenewing

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or revoking a charter contract, or imposing unilateral conditions on an applicant or charter school.

Section 3. Appeal. (1) The appellant shall submit its appeal of an authorizer's decision denying a charter application or a charter amendment request, nonrenewing or revoking a charter contract, or imposing unilateral conditions on an applicant or charter school to the commissioner of education, to receive the appeal on behalf of the Kentucky Board of Education, as follows:

(a) The deadline for appeals to the Kentucky Board of Education under KRS 160.1595 shall be thirty (30) days, as evidenced by the face of the authorizer's notice to the charter school or applicant of the decision to deny a charter application or charter contract amendment request, to impose unilateral conditions on the applicant or the charter school, or to revoke or nonrenew the charter contract;

(b) The appeal shall include the name, phone number, mailing address, and email address of the contact for the appellant and any legal counsel;

(c) The appeal shall include a statement from the appellant whether there is a request for a hearing, and whether the hearing is requested to be held in the local school district in which the charter school lies or would lie; and

(d) The appeal shall be submitted on the Notice of Appeal and include any necessary additional documentation.

(2) The Kentucky Board of Education may affirm the decision of the authorizer based on the failure of an appellant to meet any of the deadlines of this administrative regulation or the hearing process.

(3) Within five (5) days of the commissioner's receipt of the appeal, the commissioner of education on behalf of the Kentucky Board of Education shall provide notice to the appellant and the authorizer acknowledging receipt of the appeal, and:

(a) If a hearing is requested in the appeal, the commissioner of education shall designate a hearing officer to set the prehearing schedule, to conduct a KRS Chapter 13B public hearing before the Kentucky Board of Education on the appeal, and to set the location of the public hearing; or

(b) If a hearing is not requested in the appeal or if the appellant waives its right at any time to a hearing by providing written notice of its waiver to the commissioner of education or to any previously appointed hearing officer, the hearing officer shall set the schedule for written pleadings under KRS 13B.090(2) to be submitted to the Kentucky Board of Education without a hearing.

(4) The written decision of the Kentucky Board of Education shall be issued no later than seven (7) days after the conclusion of the hearing or the meeting to decide upon the written pleadings, which shall be held within the time allowed in KRS 160.1595(3)(a).

Section 4. Emergency Action. (1) Emergency action taken by the authorizer pursuant to KRS 160.1598(7) shall be taken in accordance with KRS 13B.125.

Section 5. Automatic Revocation or Nonrenewal. (1) The Kentucky Board of Education shall affirm revocation or nonrenewal of a charter school for whom the commissioner of education has determined a member of the charter school board of directors, or an education service provider at the direction of a member of the board of directors, or an employee at the direction of a member of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in the performance framework of the charter contract or the state accountability system after:

(a) The department's presentation of a preponderance of evidence at a KRS Chapter 13B hearing before the Kentucky Board of Education that a member of the charter school board of directors, or an education service provider at the direction of a member of the charter school board of directors, or an employee at the direction of a member of the charter school board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in:

1. The performance framework of the charter contract; or
  2. The state accountability system; or
- (b) The charter school board of directors waives its right to a KRS Chapter 13B hearing under this section.

Section 6. Incorporation by Reference. (1) "Notice of Appeal", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Sower Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, Ph.D., Commissioner  
MARY GWEN WHEELER, Chair

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2017, at 10 a.m., 300 Sower Blvd, Room 116, Frankfort, Kentucky. 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. 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: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email [kevin.brown@education.ky.gov](mailto:kevin.brown@education.ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation fulfills the regulation promulgation requirement of the agency in KRS 160.1598.

(b) The necessity of this administrative regulation: KRS 160.1598 became effective on June 29, 2017. This administrative regulation provides guidance on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 160.1598 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school. This administrative regulation provides guidance from the agency on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 160.1598 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations provides guidance from the agency on student application, lottery, and enrollment in the public charter schools. This new administrative regulation provides guidance to facilitate transparency and uniformity in the process for a public charter school appeal of an authorizer's decision to revoke or non-



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renew a charter school, as required by KRS 160.1598.

(2) If 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: The authorizing statute requires the agency to provide guidance on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school.

(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:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Charter school authorizers, public charter schools, students attending public charter schools, and the Kentucky Department of Education will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public charter schools, for whom the authorizer has decided to revoke or non-renew the charter contract, will have to appeal the authorizer's decision pursuant to this administrative regulation to prevent revocation or nonrenewal. Charter authorizers, that revoke or non-renew a charter school's contract, will have to allow the charter school the due process opportunity to challenge the revocation or nonrenewal decision. The Kentucky Department of Education shall provide support to ensure the transparent and uniform appeal process for public charter schools.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs for authorizers and charter schools should be minimal to none because the statutes require the substance of what the authorizer and the charter school will present in an appeal. Same for the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation will provide guidance on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school.

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

(a) Initially: Compliance costs should be minimal to none.

(b) On a continuing basis: Compliance costs should be minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds and school district funds, and funds provided to public charter schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and all public charter schools.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?: Charter school authorizers, public charter schools, and the Kentucky Department

of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1598

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 should have no impact on the expenditures or revenues for public charter schools, their authorizers, or the agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation should not impact school district or public charter school revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation should not impact school district or public charter school revenues.

(c) How much will it cost to administer this program for the first year? Administration costs to school districts or public charter schools should be minimal to none.

(d) How much will it cost to administer this program for subsequent years? Administration costs to school districts or public charter schools should be minimal to 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: There should be no fiscal impact resulting from the new administrative regulation.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Kentucky Board of Education  
Department of Education  
(New Administrative Regulation)**

**701 KAR 8:040. Conversion charter school petition, conversion, and operation.**

RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.141

STATUTORY AUTHORITY: KRS 160.1599

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1599 requires the Kentucky Board of Education to promulgate an administrative regulation to govern the processes and procedures for the petition, the conversion, and the operation of a conversion public charter school. This administrative regulation provides requirements for conversion public charter schools.

Section 1. Definitions. (1) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(2) "Applicant" is defined in KRS 160.1590(3).

(3) "Charter application" is defined in KRS 160.1590(4).

(4) "Charter contract" or "contract" is defined in KRS 160.1590(5).

(5) "Charter school" means a public charter school.

(6) "Charter school board of directors" is defined in KRS 160.1590(6).

(7) "Conversion public charter school" or "conversion charter school" is defined in KRS 160.1590(7).

(8) "Days" means calendar days calculated pursuant to KRS 446.030.

(9) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the

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student's parents.

(10) "Enrollment" means the process for the charter school to register a student for attendance at the charter school.

(11) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(12) "Local board of education" means local school board as defined in KRS 160.1590(9).

(13) "Local school district" is defined in KRS 160.1590(10).

(14) "Lottery" means the transparent, open, equitable, and impartial process that is competently conducted with randomization in accordance with the targeted student population and service community as identified in KRS 160.1593(3) for the charter school to choose students for enrollment and attendance at the charter school when the student applications received by the charter school exceed the charter school's capacity.

(15) "Notice" means written notice.

(16) "Notify" means provide written notice.

(17) "Parent" is defined in KRS 160.1590(11).

(18) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition of KRS 387.010(2) for interested person or entity and with whom the student resides.

(19) "Petitioner" means the persons or organizations initiating and circulating a petition to convert an existing public school to a charter school.

(20) "Public charter school" is defined in KRS 160.1590(12).

(21) "School level" or "Level" or "Educational level" means the configuration of grade levels that form elementary, middle, and high schools.

(22) "Student" is defined in KRS 160.1590(19) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(23) "Student application" means an application submitted to a charter school for student enrollment in the charter school.

(24) "Superintendent" means the local school district employee tasked with the duties described in KRS 160.370.

(25) "Year" or "Academic year" or "School year" means school year as defined in KRS 158.050.

Section 2. Conversion Petition and Charter Application. (1) The department shall annually publish on its website a list of noncharter public schools, by school level, that are eligible for charter school conversion through the petition process pursuant to KRS 160.1599(2)(a).

(2) Prior to circulation of a petition to convert an existing public school to a charter school, a petitioner shall file a notice of intent with the resident board of education.

(3) If a charter application proposes that a newly converted charter school is to be established and prepared to enroll students for the next school year, both the charter application and the petition, determined to be valid pursuant to subsection (9) of this section, proposing the conversion of an existing public school to a charter school shall be submitted to the authorizer on or before October 30.

(4) A petitioner shall utilize the Public Charter School Conversion Petition and shall include the following information in a petition to convert an existing public school to a charter school:

(a) A written statement that the petition seeks to convert the existing public school to a charter school;

(b) A written statement of the reasons the petitioner believes the existing public school should be converted to a charter school, including descriptions of how the conversion public charter school shall accomplish the purposes of KRS 160.1591(2); and

(c) Information for filing a written complaint to the commissioner of education regarding the petition or the petitioner.

(5) For the signatures on the petition to count toward the requirements of KRS 160.1599(2)(a) or (b), a petitioner shall ensure inclusion of the following from each of the existing public school's resident parents, persons with custody or charge, adult students, or emancipated youth students signing the petition:

(a) Their printed names;

(b) Their mailing and street address, phone number, and email address, as available; and

(c) Their signature in ink or indelible pencil;

(6) The inclusion of signatures, from adult students, emancipated youth students, or parents or persons with custody or charge, on behalf of students who do not attend the existing public school as residents of the local school district and under the attendance zone boundary policies and procedures of the local board of education for the local school district, shall not count toward the requirements of KRS 160.1599(2)(a) or (b).

(7) Signatures from parents, persons with custody or charge, adult students, and emancipated youth students shall count toward the requirements of KRS 160.1599(2)(a) or (b) up to but not in excess of the number of students attending the existing public school for whom those individuals are parents or persons with custody or charge or the students themselves.

(8) The inclusion of an invalid signature on the petition shall not invalidate the entire petition, but shall instead result in the invalid signature being stricken and not counted.

(9) Within thirty (30) days of receipt of a petition for conversion of an existing public school, a local school district designee of the local board of education shall conduct and complete an examination of the signatures on the petition and any necessary investigation to make a determination of whether the petition contains enough signatures of qualified resident adult students, emancipated youth students, and parents and persons with custody or charge of students attending the existing public school to meet the requirements of KRS 160.1599(2)(a) or (b).

(10) Within three (3) days of making the determination in subsection (9) of this section, the local school district designee of the local board of education shall provide notice as to whether the petition met the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b):

(a) On the local school district website; and

(b) To the following:

1. The petitioner;

2. The existing public school's principal;

3. Any school-based decision making council of the existing public school established under KRS 160.345; and

4. The local board of education.

(11) For a petition under KRS 160.1599(2)(b), the local board of education's majority vote to convert the existing public school to a charter school shall be conducted at its next regular meeting or an earlier special meeting.

(12) Any person who has reason to believe that the petition process was not conducted pursuant to the requirements of this administrative regulation or that the signatures on the petition were procured through fraud, intimidation, bribery, or harassment, may file a written complaint with the commissioner of education and the commissioner of education shall:

(a) Cause an investigation to determine the validity of the petition;

(b) Ensure the investigation is completed within thirty (30) days of receipt of the complaint; and

(c) Render a determination as to the validity of the petition.

(13) If the petition fails to meet the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b) or if the commissioner of education determines the petition to be invalid, the existing public school shall not be eligible for conversion to a charter school unless:

(a) The local board of education acts pursuant to KRS 160.1599(2)(c); or

(b) Another petition is circulated and determined to be valid pursuant to KRS 160.1599(a) or (b) and this administrative regulation.

(14) After any vote by the local board of education required pursuant to KRS 160.1599(2)(b) or (c), an applicant shall submit to the authorizer a charter application to convert an existing public school to a charter school during the same school year as:

(a) The local board of education's vote to convert an existing public school to a charter school pursuant to KRS 160.1599(2)(c); or

(b) 1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of the local board of education, if required by KRS 160.1599(2)(b).

(15) After any vote by the local board of education required pursuant to KRS 160.1599(2)(b) or (c), the authorizer shall allow submission of a charter application to convert the existing public school to a charter school during the same school year as:

(a) The local board of education's vote to convert the existing public school to a charter school, pursuant to KRS 160.1599(2)(c); or

(b)1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of the local board of education, if required by KRS 160.1599(2)(b).

(16) The authorizer shall commence the charter application review and approval process pursuant to KRS 160.1594 and 701 KAR Chapter 8 upon receipt of a charter application to convert an existing public school to a charter school within the same school year as either:

(a) The local board of education's vote to convert an existing public school to a charter school pursuant to KRS 160.1599(2)(c); or

(b)1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of the local board of education, if required by KRS 160.1599(2)(b).

(17) The authorizer shall review the petition and a submitted charter application and only approve the conversion of an existing public school if the charter application meets the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and if:

(a) The petition meets the requirements of KRS 160.1599 and this administrative regulation during the same school year as the filing of the charter application, and if the commissioner of education has not determined the petition to be invalid; or

(b) The local board of education has voted within the same school year to convert an existing public school to a charter school.

(18) The department shall create a charter school conversion petition and application guidance document that petitioners, applicants, authorizers, and local boards of education may utilize.

Section 3. Conversion. (1) No conversion public charter school shall begin operation after the beginning of a school year.

(2) After the local board of education's vote to convert an existing public school to a charter school or completion of the petition process requirements of KRS 160.1599(2)(a) or (b) and this administrative regulation, and after the authorizer's approval of a charter application to establish a conversion public charter school, the superintendent shall:

(a) Notify resident students of the conversion of the existing public school and provide information for student application to the conversion charter school during the time that information on other school programs in the local school district is provided;

(b) Create with the conversion charter school board of directors a plan for conversion of the existing public school which will include, at a minimum, timelines, roles, responsibilities, and notification requirements for the following:

1. Coordination of student application, lottery, enrollment, and transfer to and from the conversion charter school; and

2. Transfer of management and operation of the conversion charter school in the same public school facility for the school years included in the conversion charter school's operation under the charter contract;

(c) Meeting during the first year of the charter contract with the charter school board of directors to coordinate student application, lottery, enrollment, and transfer of students; and

(d) Meeting throughout the charter contract with the charter school board of directors regarding the usage and maintenance of the facility by the charter school board of directors.

(3) The local board of education and the conversion charter school board of directors shall execute a lease for the public school

facility prior to the operation of a conversion public school.

(4) The department shall create a charter school conversion process guidance document that an authorizer, local board of education, and a charter school board of directors may utilize.

Section 4. Employees. (1) Local school district employees placed in the existing public school prior to conversion, who are not hired by the conversion charter school board of directors to work in the converted charter school, shall retain their employment rights with the district, pursuant to KRS Chapter 161 and under the provisions of any collective bargaining agreement with the district.

(2) A teacher, with continuing status pursuant to KRS Chapter 161, who is employed by the district, who is hired by the conversion charter school board of directors to work in the converted charter school, and who is granted leave by the local board of education pursuant to KRS 160.1593(22), shall notify the district of the teacher's intent to work in the converted charter school or to return to employment with the local school district the next school year by April 15 of each year of the granted leave.

(3) The department shall create a charter school conversion employee transition guidance document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 5. Students. (1) The district shall provide, to the students and parents and persons with custody or charge of students who attend an existing public school that has been approved for conversion to a charter school, information and any plan the district will use to address the educational needs and placements of students who choose not to attend the conversion charter school.

(2) The department shall create a charter school conversion student transition guidance document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 6. Operation and Reversion of a Conversion Charter School. (1) An authorizer may otherwise renew, non-renew, revoke, or take other action regarding a conversion public charter school as provided in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(2) If a closed conversion charter school is reverting back to its noncharter status, the local board of education shall solicit feedback on the future of the school from parents, persons with custody or charge, adult students, and emancipated youth students of the school prior to the reversion.

Section 7. Incorporation by Reference. (1) "Public Charter School Conversion Petition", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, PH.D., Commissioner  
MARY GWEN WHEELER, Chair

APPROVED BY AGENCY: October 13, 2017

FILED WITH LRC: October 13, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2017, at 10 a.m., 300 Sower Blvd, Room 116, Frankfort, Kentucky. 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 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

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be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. 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:** Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email [kevin.brown@education.ky.gov](mailto:kevin.brown@education.ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation fulfills the regulation promulgation requirement of the agency in KRS 160.1590 to 160.1599 and 161.141.

(b) The necessity of this administrative regulation: KRS 160.1590 to 160.1599 and 161.141. became effective on June 29, 2017. This administrative regulation provides guidance on student application, lottery, and enrollment in public charter schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance on student application, lottery, and enrollment in the public charter schools. This administrative regulation provides guidance from the agency on student application, lottery, and enrollment in the public charter schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations provides guidance from the agency on conversion charter school creation and operation.

(2) If 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: The authorizing statute requires the agency to provide guidance on conversion charter school creation and operation.

(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:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, public charter schools, students applying for enrollment in public charter schools, and the Kentucky Department of Education will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts, whose students seek enrollment in public charter schools, will have to verify valid conversion petitions. Public charter schools, who seek to enroll students, will not be impacted. Students, who seek enrollment in a public charter school, will need to determine if the conversion school still meets their education needs. The Kentucky Department of Education shall provide support to ensure the transparent and uniform guidance on conversion charter school creation and operation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): Compliance costs for school districts should be minimal to none because school districts are already facilitating the transfer of students to other schools. Compliance costs for public charter schools should be minimal to none because this administrative regulation should provide guidance and relevant documents on conversion charter school creation and operation. Same for students and the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation will provide guidance and relevant documents on conversion charter school creation and operation.

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

(a) Initially: Compliance costs should be minimal to none.

(b) On a continuing basis: Compliance costs should be minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds and school district funds, and funds provided to public charter schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and all public charter schools.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, public charter schools, and the Department of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1590 to 160.1599 and 161.141.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 should have no impact on the expenditures or revenues for school districts or public charter schools.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation should not impact school district or public charter school revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation should not impact school district or public charter school revenues.

(c) How much will it cost to administer this program for the first year? Administration costs to school districts or public charter schools should be minimal to none.

(d) How much will it cost to administer this program for subsequent years? Administration costs to school districts or public charter schools should be minimal to 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: There should be no fiscal impact resulting from the new administrative regulation.

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LABOR CABINET  
Department of Workplace Standards  
Division of Wages and Hours  
(Repealer)

**803 KAR 3:051. Repeal of 803 KAR 3:050.**

RELATES TO: KRS 2017 Ky. Acts. Ch. 134, sec. 13; KRS 336.1661, 336.1662, 336.1663, 336.1664

STATUTORY AUTHORITY: KRS 2017 Ky. Acts. Ch. 134, sec. 13

NECESSITY, FUNCTION, AND CONFORMITY: 803 KAR 3:050 was promulgated pursuant to KRS 336.1664, which authorized the Secretary of the Labor Cabinet to promulgate administrative regulations to effectuate the purposes of 336.1662 and 336.1663 relating to arbitration of labor disputes. KRS 2017 Ky. Acts. Ch. 134, sec. 13 repealed KRS 336.1661, 336.1662, 336.1663, and KRS 336.1664. Accordingly, this administrative regulation repeals 803 KAR 3:050.

Section 1. 803 KAR 3:050, Arbitration, is hereby repealed.

DERRICK K. RAMSEY, Secretary

APPROVED BY AGENCY: October 11, 2017

FILED WITH LRC: October 11, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2017, at 10:00 a.m., at the Department of Workers' Claims, Oscar Morgan Conference Room, 657 Chamberlin Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Brooken Smith, Chief of Staff, Office of the Secretary, Kentucky Labor Cabinet, 1047 U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-0688, fax (502) 564-5387, email [Brooken.Smith@ky.gov](mailto:Brooken.Smith@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brooken Smith

(1) Provide a brief summary of:

(a) What this administrative regulation does: In accordance with 2017 Ky. Acts ch. 134, sec. 13 and KRS 13A.310, this administrative regulation repeals 803 KAR 3:050.

(b) The necessity of this administrative regulation: 2017 Ky. Acts ch. 134, sec. 13 repealed KRS 336.1664, the statutory authority for 803 KAR 3:050. Accordingly, this administrative regulation is necessary to repeal 803 KAR 3:050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2017 Ky. Acts ch. 134, sec. 13 repealed KRS 336.1664, the statutory authority for 803 KAR 3:050. Accordingly, this administrative regulation is necessary to repeal 803 KAR 3:050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is part of the cabinet's effort under Governor Bevin's Red Tape Reduction initiative to repeal obsolete and unnecessary regulations in accordance with KRS 13A.310.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative

regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In accordance with 2017 Ky. Acts ch. 134, sec. 13, 803 KAR 3:051 repeals 803 KAR 3:050, which established criteria for the appointment of arbitrators, required the maintenance of a roster of arbitrators, and established the procedure for obtaining arbitration services, fee schedule and reporting requirements, and other matters relating to the arbitration of labor disputes. As a repeal of an existing administrative regulation, this administrative regulation does not impose any obligation on individuals, businesses, organizations or state and local governments.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The repeal of 803 KAR 3:050 does not impose any required action upon individuals, businesses, organizations or state and local governments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The repeal of 803 KAR 3:050 does not impose any obligation upon individuals, business, organizations or state and local governments. Accordingly, there is no cost of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation repeals 803 KAR 3:050.

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

(a) Initially: This administrative regulation imposes no cost on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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: This administrative regulation repeals 803 KAR 3:050, which established a limit on fees for arbitrators designated by the Labor Cabinet to assist in the resolution of labor disputes upon a request of the parties. Otherwise, no fees are established or directly or indirectly increased.

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation repeals 803 KAR 3:050.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 repeal of 803 KAR 3:050 does not impose any obligations on state or local governmental entities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2017 Ky. Acts ch. 134, sec. 13 and KRS 13A.310.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

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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 repeal of 803 KAR 3:050 does not establish a program which requires costs to administer.

(d) How much will it cost to administer this program for subsequent years? The repeal of 803 KAR 3:050 does not establish a program which requires costs to administer.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of October 10, 2017

**Call to Order and Roll Call**

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 10, 2017, at 1 p.m. in Room 149 of the Capitol Annex. Representative Upchurch, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the September 2017 meeting were approved.

**Present were:**

**Members:** Senators Perry Clark, Alice Forgy Kerr, Ernie Harris and Julie Raque Adams, and Representatives Jason Petrie, Tommy Turner and Ken Upchurch.

**LRC Staff:** Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

**Guests:** Travis Powell, Rae Smith, Council on Postsecondary Education; Mark Bowman, Dennis Shephard, Department of Veterans Affairs; Beau Barnes, Teachers Retirement System; Steve Bullard, Department of Military Affairs; Leanne Diakov, Board of Medical Licensure; Melanie Abner, Curt Duff, John Marcus Jones, Board of Ophthalmic Dispensers; Kanetha Dorsey, Board of Embalmers and Funeral Directors; Nathan Goldman, Board of Nursing; Scott Majors, Board of Physical Therapy; Matt James, Licensed Diabetes Educators; Allen Luttrell, Michael Mullins, James Wright, Department of Natural Resources; Heather Wagers, Fred Williams; Kentucky State Police; Amy Barker, Department of Corrections; Chad Collins, Julian Tackett, Kentucky High School Athletic Association; Angela Evans, Howdy Kurtsinger, Fire Commission; Laura Arnold, Chase Bannister, David Horseman, Katie Houghlin, Brad Montell, Department of Education; Kevin Osborne, Department of Workforce Development; Ervin Dimeny, Brooken Smith, Labor Cabinet; Stephen Humphress, Heather Mercadante, Department of Alcoholic Beverage Control; Patrick O'Connor, Department of Insurance; Tim Feeley, Suzette Kimbell, and Greg Mayes, Office of the Secretary.

**The Administrative Regulation Review Subcommittee met on Tuesday, October 10, 2017, and submits this report:**

**Administrative Regulations Reviewed by the Subcommittee: COUNCIL ON POSTSECONDARY EDUCATION: Public Educational Institutions**

13 KAR 2:120. Comprehensive funding model for the allocation of state general fund appropriations to public universities. Travis Powell, general counsel and associate council vice president, represented the council.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 and 6 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

13 KAR 2:130. Comprehensive funding model for the allocation of general fund appropriations to the Kentucky Community and Technical College System institutions.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Adult Education and Literacy**

13 KAR 3:050. GED® eligibility requirements.

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.

**OFFICE OF THE GOVERNOR: Department of Veterans' Affairs: State Veterans' Nursing Homes**

17 KAR 3:020 & E. Charges for room and board, goods and services at state veterans nursing homes. Mark Bowman, executive director, and Dennis Shepherd, counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to add a new Section 4 to incorporate by reference required building standards. Without objection, and with agreement of the agency, the amendments were approved.

**FINANCE AND ADMINISTRATION CABINET: Teachers' Retirement System: Board of Trustees**

102 KAR 1:070. Application for retirement. Beau Barnes, deputy executive secretary and general counsel, represented the board.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

**DEPARTMENT OF MILITARY AFFAIRS: Division of Administrative Services: Military Assistance Trust Funds**

106 KAR 2:040. Survivor benefits for death of a National Guard or Reserve Component member. Brigadier General; Steve Bullard; deputy chief for the joint staff of the joint-force headquarters for the Kentucky National Guard, chief of staff for the Headquarters of the Kentucky Air National Guard, and Director of the Division of Administrative Services, Kentucky Department of Military Affairs; represented the division.

Co-Chair Upchurch thanked Brigadier General Bullard for his service to the country.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 5, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**GENERAL GOVERNMENT CABINET: Board of Medical Licensure**

201 KAR 9:260. Professional standards for prescribing and dispensing controlled substances. Leanne Diakov, general counsel, represented the board.

In response to questions by Co-Chair Harris, Ms. Diakov stated that the three (3) day window restriction on controlled substances was for acute pain. Pain associated with a surgical procedure constituted an exception, in which case a surgeon had a fourteen (14) day window to issue an additional prescription if necessary. The duration of that prescription was at the discretion of the surgeon.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 5, 6, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Professional Licensing: Board of Ophthalmic Dispensers**

201 KAR 13:040. Licensing; application, examination, experience, renewal, and inactive status. Melanie Abner, optician; Curt Duff, optician assistant; and Marcus Jones, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4 and 6 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 6 to cross reference KRS 335B.020 and 335B.030 regarding board

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notification and procedure requirements for applicants with a prior criminal conviction and to require the applicant to participate in an interview with the application committee upon written request of the board. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 13:060. Military service; reciprocity.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **Board of Embalmers and Funeral Directors**

201 KAR 15:030. Fees. Kanetha Dorsey, executive director, represented the board.

In response to a question by Co-Chair Harris, Ms. Dorsey stated that there were individual applications for each continuing education course. A continuing education conference setting may include several courses, which could become expensive. The board established a \$600 maximum cap for a continuing education conference.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 7 and 8 to clarify how the continuing education application fee and the document processing fee applied; and (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 5, 11, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 15:050. Apprenticeship and supervision requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to include additional requirements for apprenticeship registration to reflect current practice of the board; (2) to amend Sections 3 through 6 to establish requirements and procedures for the Apprentice Travel Form, Level II Apprenticeship Registration Form, Change of Supervisor form, and Apprenticeship Sworn Statement form; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to add material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 15:110. Funeral establishment criteria.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 7 and 8 to establish requirements and procedures for the Information and Name Change Application form; (2) to amend Section 9 to include additional application and renewal requirements to reflect current practice of the board; (3) to delete Section 11, which required that the name of the licensed funeral director and the establishment be included in publication of an obituary; (4) to add material incorporated by reference; and (5) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **Board of Nursing**

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses. Nathan Goldman, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 6, 9, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **Board of Physical Therapy**

201 KAR 22:020. Eligibility and credentialing procedure. Scott Majors, interim executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 2 to clarify the deadline for the criminal background check. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or physical therapist assistant.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 3 to clarify the deadline for the criminal background check. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 22:070. Requirements for foreign-educated physical therapists.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the deadline for the criminal background check; and (2) to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **Board of Licensed Diabetes Educators**

201 KAR 45:071. Repeal of 201 KAR 45:070. Matt James, assistant attorney general, represented the board.

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.

201 KAR 45:110. Supervision and work experience.

201 KAR 45:120. Renewal, reinstatement, and inactive status.

201 KAR 45:170. Application procedures.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Forestry**

402 KAR 3:010. Timber sales. Allen Luttrell, commissioner, and James Wright, director, represented the division.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

402 KAR 3:030. Best management practices for timber harvesting operations.

### **JUSTICE AND PUBLIC SAFETY CABINET: Office of the Secretary: Breath Analysis Operators**

500 KAR 8:010. Certification of breath alcohol analysis instrument operators. Heather Wagers, attorney and legislative liaison, and Major Fred Williams, Commander of the Division of Operational Support, represented the office.

500 KAR 8:030. Administration of breath alcohol tests and chemical analysis tests.

In response to questions by Co-Chair Harris, Major Williams stated that the requirement for twenty (20) minutes of personal observation prior to an analysis test was to ensure that the person did not ingest anything that might alter the test results. The



purpose was to provide evidence of probable cause demonstrating that the person was intoxicated at the time of the traffic stop.

In response to questions by Representative Petrie, Major Williams stated that previous to this amendment, the twenty (20) minute observation period may have taken place while the person was detained in the back of the police cruiser. This amendment required the twenty (20) minute observation period to take place at the testing location with direct perception. The twenty (20) minute observation period would be reset if for some reason direct perception was interrupted.

**Department of Corrections: Office of the Secretary**

501 KAR 6:110. Roederer Correctional Complex. Amy Barker, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: School Terms, Attendance and Operation**

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics. Chad Collins, general counsel, and Julian Tackett, commissioner, represented the Kentucky High School Athletics Association.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Governor's Commission on Fire Protection Personnel Standards: Commission on Fire Protection Personnel Standards and Education**

739 KAR 2:050. Volunteer fire department aid. Angela Evans, general counsel, and Michael "Howdy" Kurtsinger, government relations director, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Personnel System for Certified and Equivalent Employees**

780 KAR 3:072. Attendance, compensatory time, and leave for certified and equivalent service. Laura Arnold, associate commissioner; Chase Bannister, counsel; and David Horseman, director, represented the department.

In response to questions by Co-Chair Harris, Mr. Horseman stated that these administrative regulations were substantially consistent with those established for traditional public teachers. There were minor differences due to district idiosyncrasies.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to clarify requirements pertaining to the accumulation and use of personal leave for teachers and principals; (2) to amend Section 4 to establish additional sick leave for teachers and principals who complete ten (10) years and twenty (20) years of service; (3) to amend Section 13 to clarify requirements regarding remaining emergency leave upon an employee's separation from employment; and (4) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4, 6, 7, 9, 11, 13, and 14 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

780 KAR 3:080. Extent and duration of school term, use of school day and extended employment.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Workplace Development: Office of Employment and Training: Unemployment Insurance**

787 KAR 1:070. Reasonable time for protesting claim. Katie Houghlin, unemployment insurance director; Brad Montell, former Representative and deputy secretary; and Kevin Osborne, attorney, represented the office.

In response to questions by Co-Chair Harris, Mr. Montell stated that there was some pushback from employers related to decreasing the documentation deadline. After meeting with employer groups, a compromise was reached, from a ten (10) day to a twelve (12) day electronic filing of the documentation. The challenge was ensuring that the deadline allowed the office to comply with federal deadlines enforced on the office.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to establish that if an employer submits a protest by paper, the documentation shall be received within ten (10) days of the date of first notice to the employer that a claim has been submitted; (2) to amend Section 2 to establish that if an employer submits a protest electronically, the documentation shall be received within twelve (12) days of the date of first notice to the employer that a claim has been submitted; and (3) 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.

**LABOR CABINET: Department of Workplace Standards: Division of Wages and Hours: Labor Standards; Wages and Hours**

803 KAR 1:100. Child labor. Ervin Dimeny, commissioner, and Brooken Smith, chief of staff, represented the division.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A.

803 KAR 1:121. Repeal of 803 KAR 1:030 and 803 KAR 1:040.

**Kentucky Labor Management Matching Grant Program**

803 KAR 6:011. Repeal of 803 KAR 6:010.

**Department of Alcoholic Beverage Control: Conduct of Business; Employees**

804 KAR 5:070. Minors. Stephen Humphress, general counsel, and Heather Mercadante, counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to clarify what other types of businesses qualify for the minors exemption; and (2) 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.

**Alcoholic Beverage Control Board**

804 KAR 6:020. Advisory opinions.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 4, 5, 7, and 8 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: Authorization of Insurers and General Requirements**

806 KAR 3:011. Repeal of 806 KAR 3:010, 806 KAR 3:020,

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and 806 KAR 3:220. Patrick O'Connor, deputy commissioner of policy, represented the department.

806 KAR 3:210. Privacy of consumer financial and health information.

In response to questions by Co-Chair Harris, Mr. O'Connor stated that this administrative regulation was being rewritten commensurate with 2015 federal revisions. The revisions allowed financial and insurance companies to opt out of sending privacy notices.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 8, 10 through 17, 19, 20, 22, and 24 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Secretary: Medical Review Panel Branch**

900 KAR 11:010 & E. Medical review panels. Judge Tim Feeley, deputy secretary; Greg Mayes, executive advisor; and Suzette Kimbell, executive administrative secretary, represented the branch.

In response to questions by Representative Petrie, Judge Feeley stated that the panel had not been appropriated funding. The filing fee was to offset costs. It was set high enough to discourage frivolous filing, but was lower than the filing fee for circuit court. The fee may be waived in cases of indigence. The panel would need a half-time attorney, full-time attorney, and a full-time clerk, which would together cost approximately \$330,000 annually. Mr. Mayes stated that the start-up cost for electronic filing was approximately \$200,000. Regular maintenance for an electronic filing system was expected, but it was not possible to determine what the cost would be.

In response to a question by Co-Chair Harris, Judge Feeley stated that there were numerous public comments received regarding this administrative regulation during the public comment period; however, the comments were not particularly controversial. The comments addressed various technical concerns about the system.

A motion was made and seconded to approve the following amendment: to amend Section 6 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

**Other Business:** Co-Chair Upchurch welcomed his son, Jackson Upchurch, who was attending the Subcommittee meeting.

**The following administrative regulations were deferred or removed from the October 10, 2017, Subcommittee agenda:**

### **EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board**

16 KAR 1:015. Standards for certified teacher leader.

### **DEPARTMENT OF STATE: Registry of Election Finance: Reports and Forms**

32 KAR 1:020 & E. Statement of spending intent and appointment of campaign treasurer.

### **GENERAL GOVERNMENT CABINET: Board of Pharmacy**

201 KAR 2:380. Board authorized protocols.

201 KAR 2:390 & E. Third-party logistics provider.

201 KAR 2:400 & E. Outsourcing facility.

### **Board of Licensure for Occupational Therapy**

201 KAR 28:200. Continuing competence.

201 KAR 28:235. Telehealth occupational therapy services.

### **Board of Licensed Professional Counselors**

201 KAR 36:065. Licensed professional clinical counselor supervisor.

201 KAR 36:070. Application, education, and examination requirements.

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

301 KAR 1:130. Live bait for personal use.

301 KAR 1:155. Commercial fishing requirements.

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

### **ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Waste Management: Identification and Listing of Hazardous Waste**

401 KAR 31:002. Repeal of 401 KAR 31:005, 401 KAR 31:010, 401 KAR 31:020, 401 KAR 31:030, 401 KAR 31:035, 401 KAR 31:040, 401 KAR 31:050, 401 KAR 31:070, 401 KAR 31:100, 401 KAR 31:110, 401 KAR 31:160, and 401 KAR 31:170.

### **Standards Applicable to Generators of Hazardous Waste**

401 KAR 32:002. Repeal of 401 KAR 32:005, 401 KAR 32:010, 401 KAR 32:020, 401 KAR 32:030, 401 KAR 32:040, 401 KAR 32:050, 401 KAR 32:060, 401 KAR 32:065, and 401 KAR 32:100.

### **Standards Applicable to Transporters of Hazardous Waste**

401 KAR 33:002. Repeal of 401 KAR 33:005, 401 KAR 33:010, 401 KAR 33:020, and 401 KAR 33:030.

### **Standards for Owners and Operators of Hazardous Waste Storage, Treatment and Disposal Facilities**

401 KAR 34:002. Repeal of 401 KAR 34:005, 401 KAR 34:010, 401 KAR 34:020, 401 KAR 34:030, 401 KAR 34:040, 401 KAR 34:050, 401 KAR 34:060, 401 KAR 34:070, 401 KAR 34:080, 401 KAR 34:090, 401 KAR 34:100, 401 KAR 34:110, 401 KAR 34:120, 401 KAR 34:130, 401 KAR 34:180, 401 KAR 34:190, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, 401 KAR 34:240, 401 KAR 34:245, 401 KAR 34:250, 401 KAR 34:275, 401 KAR 34:280, 401 KAR 34:281, 401 KAR 34:285, 401 KAR 34:287, 401 KAR 34:290, 401 KAR 34:320, 401 KAR 34:330, 401 KAR 34:340, 401 KAR 34:350, 401 KAR 34:360, and 401 KAR 34:370.

### **Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities**

401 KAR 35:002. Repeal of 401 KAR 35:005, 401 KAR 35:010, 401 KAR 35:020, 401 KAR 35:030, 401 KAR 35:040, 401 KAR 35:050, 401 KAR 35:060, 401 KAR 35:070, 401 KAR 35:080, 401 KAR 35:090, 401 KAR 35:100, 401 KAR 35:110, 401 KAR 35:120, 401 KAR 35:130, 401 KAR 35:180, 401 KAR 35:190, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, 401 KAR 35:230, 401 KAR 35:240, 401 KAR 35:245, 401 KAR 35:250, 401 KAR 35:260, 401 KAR 35:270, 401 KAR 35:275, 401 KAR 35:280, 401 KAR 35:281, 401 KAR 35:285, 401 KAR 35:290, 401 KAR 35:310, 401 KAR 35:320, 401 KAR 35:330, 401 KAR 35:340, and 401 KAR 35:350.

### **Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste**

401 KAR 36:002. Repeal of 401 KAR 36:005, 401 KAR 36:020, 401 KAR 36:025, 401 KAR 36:030, 401 KAR 36:060, 401 KAR 36:070, 401 KAR 36:080, and 401 KAR 36:090.

### **Land Disposal Restrictions**

401 KAR 37:002. Repeal of 401 KAR 37:005, 401 KAR 37:010, 401 KAR 37:020, 401 KAR 37:030, 401 KAR 37:040, 401 KAR 37:050, 401 KAR 37:060, and 401 KAR 37:110.

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### **Hazardous Waste Permitting Process**

401 KAR 38:002. Repeal of 401 KAR 38:005, 401 KAR 38:010, 401 KAR 38:020, 401 KAR 38:025, 401 KAR 38:030, 401 KAR 38:040, 401 KAR 38:050, 401 KAR 38:060, 401 KAR 38:070, 401 KAR 38:080, 401 KAR 38:090, 401 KAR 38:150, 401 KAR 38:160, 401 KAR 38:170, 401 KAR 38:180, 401 KAR 38:190, 401 KAR 38:200, 401 KAR 38:210, 401 KAR 38:230, 401 KAR 38:240, 401 KAR 38:250, 401 KAR 38:260, 401 KAR 38:270, 401 KAR 38:290, 401 KAR 38:300, 401 KAR 38:310, 401 KAR 38:320, 401 KAR 38:330, and 401 KAR 38:500.

### **Hazardous Waste Fees**

401 KAR 39:005. Definitions for 401 KAR Chapter 39.

401 KAR 39:011. Repeal of 401 KAR 39:100 and 401 KAR 39:110.

401 KAR 39:060. General requirements.

401 KAR 39:080. Hazardous waste handlers.

401 KAR 39:090. Hazardous waste permit program.

401 KAR 39:120. Permit review, determination timetables, and fees.

### **Standards for Special Collection System Wastes**

401 KAR 43:002. Repeal of 401 KAR 43:005, 401 KAR 43:010, 401 KAR 43:020, 401 KAR 43:030, 401 KAR 43:040, 401 KAR 43:050, 401 KAR 43:060, and 401 KAR 43:070.

### **Standards for the Management of Used Oil**

401 KAR 44:002. Repeal of 401 KAR 44:005, 401 KAR 44:010, 401 KAR 44:020, 401 KAR 44:030, 401 KAR 44:040, 401 KAR 44:050, 401 KAR 44:060, 401 KAR 44:070, and 401 KAR 44:080.

### **Special Waste**

401 KAR 45:060. Special waste permit-by-rule.

### **Standards for Solid Waste Facilities**

401 KAR 48:005. Definitions related to 401 KAR Chapter 48.

401 KAR 48:090. Operating requirements for contained landfills.

### **Division of Mine Permits: General Provisions**

405 KAR 7:001. Definitions for 405 KAR Chapter 7.

405 KAR 7:095. Assessment of civil penalties.

### **Permits**

405 KAR 8:001. Definitions for 405 KAR Chapter 8.

405 KAR 8:010. General provisions for permits.

405 KAR 8:040. Underground coal mining permits.

405 KAR 8:050. Permits for special categories of mining.

### **Bond and Insurance Requirements**

405 KAR 10:001. Definitions for 405 KAR Chapter 10.

### **Inspection and Enforcement**

405 KAR 12:001. Definitions for 405 KAR Chapter 12.

### **Performance Standards for Surface Mining Activities**

405 KAR 16:001. Definitions for 405 KAR Chapter 16.

405 KAR 16:110. Surface and groundwater monitoring.

### **Performance Standards for Underground Mining Activities**

405 KAR 18:001. Definitions for 405 KAR Chapter 18.

405 KAR 18:010. General provisions.

405 KAR 18:040. Casing and sealing of underground openings.

405 KAR 18:060. General hydrologic requirements.

405 KAR 18:110. Surface and groundwater monitoring.

405 KAR 18:260. Other facilities.

### **Special Performance Standards**

405 KAR 20:001. Definitions for 405 KAR Chapter 20.

405 KAR 20:080. In situ processing.

405 KAR 20:090. Underground only permits.

### **Department for Environmental Protection: Division of Waste Management: Certificates of Environmental Safety and Public Necessity**

410 KAR 1:002. Repeal of 410 KAR 1:010 and 410 KAR 1:020.

### **TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration**

601 KAR 2:030 & E. Ignition interlock.

### **Department of Aviation: Airport Development**

602 KAR 15:030. Fees for services and facilities of the Capitol City Airport.

### **ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Oil and Gas: Division**

805 KAR 1:060. Plugging wells.

805 KAR 1:071. Repeal of 805 KAR 1:070.

### **Division of Mine Safety: Miner Training, Education and Certification**

805 KAR 7:020. Training and certification of inexperienced miners.

805 KAR 7:030. Annual retraining.

805 KAR 7:040. Training of newly employed miners.

805 KAR 7:050. Training of miners for new work assignments.

805 KAR 7:060. Program approval.

### **Sanctions and Penalties**

805 KAR 8:030. Criteria for the imposition and enforcement of sanctions against certified miners.

805 KAR 8:040. Criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises.

805 KAR 8:050. Criteria for the imposition and enforcement of sanctions against noncertified personnel.

### **Coal Bed Methane**

805 KAR 9:041. Repeal of 805 KAR 9:040.

### **CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: State Health Plan**

900 KAR 5:020. State Health Plan for facilities and services.

### **Department for Public Health: Division of Audits and Investigations: Controlled Substances**

902 KAR 55:110. Monitoring system for prescription controlled substances.

### **Department for Public Health: Radon**

902 KAR 95:040. Radon Contractor Certification Program.

**Radiology**

902 KAR 100:180. Technologically enhanced naturally occurring radioactive material related to oil and gas development.

**Department for Medicaid Services: Division of Policy and Operations: Medicaid Services**

907 KAR 1:045. Reimbursement provisions and requirements regarding community mental health center services.

907 KAR 1:047. Community mental health center primary care services.

907 KAR 1:102. Advanced practice registered nurse services.

907 KAR 1:104. Reimbursement for advanced practice registered nurse services.

907 KAR 1:479. Durable medical equipment covered benefits and reimbursement.

**Payment and Services**

907 KAR 3:005. Coverage of physicians' services.

907 KAR 3:010. Reimbursement for physicians' services.

**Department for Community Based Services: Division of Protection and Permanency: Child Welfare**

922 KAR 1:140 & E. Foster care and adoption permanency services.

922 KAR 1:320. Service appeals.

922 KAR 1:330. Child protective services.

922 KAR 1:421. Repeal of 922 KAR 1:420.

922 KAR 1:430. Child protective services in-home case planning and service delivery.

922 KAR 1:470. Central registry.

922 KAR 1:480. Appeal of child abuse and neglect investigative findings.

922 KAR 1:490 & E. Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements.

922 KAR 1:550 & E. Operator's license for children in the custody of the cabinet.

**The Subcommittee adjourned at 2 p.m. until November 13, 2017.**

**OTHER COMMITTEE REPORTS**

**COMPILER'S NOTE:** In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY**  
**Meeting of October 5, 2017**

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 20, 2017 meeting, which are hereby incorporated by reference.

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Energy for its meeting of 10/5/2017, having been referred to the Committee on 10/4/2017, pursuant to KRS 13A.290(6):

301 KAR 1:201

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

**INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE AND FAMILY SERVICES**  
**Meeting of October 11, 2017**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare and Family Services for its meeting of October 11, 2017, having been referred to the Committee on October 4, 2017, pursuant to KRS 13A.290(6):

902 KAR 20:360 & E  
921 KAR 3:025  
921 KAR 3:042

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 11, 2017 meeting, which are hereby incorporated by reference.

# CUMULATIVE SUPPLEMENT

## Locator Index - Effective Dates

E - 2

The Locator Index lists all administrative regulations published in VOLUME 44 of the *Administrative Register of Kentucky* from July 2017 through June 2018. 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 43 are those administrative regulations that were originally published in VOLUME 43 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2017 Kentucky Administrative Regulations Service* was published.

## KRS Index

E - 11

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 44 of the *Administrative Register of Kentucky*.

## Technical Amendment Index

E - 19

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 in the *Administrative Register of Kentucky*.

## Subject Index

E - 20

The Subject Index is a general index of administrative regulations published in VOLUME 44 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

**LOCATOR INDEX - EFFECTIVE DATES**

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
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**VOLUME 43**

The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in Volume 43 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2017 Kentucky Administrative Regulations Service* was published.

**SYMBOL KEY:**

- \* Statement of Consideration not filed by deadline
- \*\* Withdrawn, not in effect within 1 year of publication
- \*\*\* Withdrawn before being printed in Register
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- (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.)

301 KAR 2:225E	2112	5-12-2017
Replaced	2199	8-3-2017
501 KAR 1:030E	2115	4-17-2017
Replaced		See 44 Ky.R.
787 KAR 2:040E	1922	3-31-2017
Replaced		See 44 Ky.R.
907 KAR 1:041E(r)	1924	3-31-2017
Expired		9-27-2017
907 KAR 3:206E(r)	1925	3-31-2017
Expired		9-27-2017
907 KAR 23:001E	1927	3-31-2017
Expired		9-27-2017
907 KAR 23:010E	1930	3-31-2017
Replaced		See 44 Ky.R.
907 KAR 23:020E	1935	3-31-2017
Replaced		See 44 Ky.R.

**ORDINARY ADMINISTRATIVE REGULATIONS:**

4 KAR 1:010		
Amended	2176	See 44 Ky.R.
4 KAR 1:040		
Amended	2178	See 44 Ky.R.
4 KAR 1:050	2239	See 44 Ky.R.
16 KAR 2:020		
Amended	2005	See 44 Ky.R.
16 KAR 5:020		
Amended	2008	See 44 Ky.R.
16 KAR 6:020		
Amended	1627	7-7-2017
16 KAR 8:040		
Amended	2011	See 44 Ky.R.
30 KAR 2:010		
Amended	2180	See 44 Ky.R.
30 KAR 5:060		
Amended	2182	See 44 Ky.R.
40 KAR 2:145		
Amended	2013	See 44 Ky.R.
40 KAR 2:150		
Amended	2015	See 44 Ky.R.
200 KAR 5:080		
Repealed	2240	9-1-2017
200 KAR 5:081(r)	2240	9-1-2017
201 KAR 2:074		
Amended	1796	See 44 Ky.R.

201 KAR 2:076		
Amended	2184	See 44 Ky.R.
201 KAR 20:056		
Amended	1799	
As Amended	2125	6-21-2017
201 KAR 20:057		
Amended	1802	6-21-2017
201 KAR 20:070		
Amended	2187	See 44 Ky.R.
201 KAR 20:110		
Amended	2189	See 44 Ky.R.
201 KAR 20:225		
Amended	2191	8-16-2017
201 KAR 20:480		
Amended	2193	8-16-2017
201 KAR 22:070		
Amended	2022	See 44 Ky.R.
201 KAR 26:125		
Amended	1805	See 44 Ky.R.
201 KAR 26:130		
Amended	1807	See 44 Ky.R.
201 KAR 26:140		
Amended	1809	See 44 Ky.R.
201 KAR 26:145		
Amended	1811	See 44 Ky.R.
201 KAR 26:155		
Amended	1814	See 44 Ky.R.
201 KAR 26:160		
Amended	1816	See 44 Ky.R.
201 KAR 26:165		
Amended	1818	See 44 Ky.R.
201 KAR 26:171		
Amended	1819	See 44 Ky.R.
201 KAR 26:175		
Amended	1823	
Reprint	2109	
Am Comments	2156	See 44 Ky.R.
201 KAR 26:180		
Amended	1826	
Am Comments	2158	See 44 Ky.R.
201 KAR 26:185		
Amended	1827	See 44 Ky.R.
201 KAR 26:190		
Amended	1829	See 44 Ky.R.
201 KAR 26:200		
Amended	1831	See 44 Ky.R.
201 KAR 26:210		
Amended	1833	See 44 Ky.R.
201 KAR 26:215		
Amended	1834	See 44 Ky.R.
201 KAR 26:225	1900	See 44 Ky.R.
201 KAR 26:250		
Amended	1836	See 44 Ky.R.
201 KAR 26:280		
Amended	1838	See 44 Ky.R.
201 KAR 26:290		
Amended	1840	See 44 Ky.R.
201 KAR 32:050		
Amended	1841	See 44 Ky.R.
201 KAR 32:060		
Amended	1843	See 44 Ky.R.
201 KAR 34:020		
Amended	2023	See 44 Ky.R.
201 KAR 34:030		
Amended	2025	See 44 Ky.R.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
201 KAR 34:050			Repealed	2078	9-8-2017
Amended	2029	See 44 Ky.R.	401 KAR 49:011		
201 KAR 39:001			Amended	2202	See 44 Ky.R.
Amended	1636		401 KAR 49:040		
Am Comments	2160	See 44 Ky.R.	Repealed	2205	9-8-2017
201 KAR 39:030			401 KAR 49:080		
Amended	1639	See 44 Ky.R.	Amended	2205	9-8-2017
201 KAR 39:050			401 KAR 49:090		
Amended	1846	See 44 Ky.R.-	Repealed	2205	9-8-2017
201 KAR 39:070			401 KAR 49:091(r)	2241	9-8-2017
Amended	1640		401 KAR 49:210		
Am Comments	2162	See 44 Ky.R.	Repealed	2205	9-8-2017
201 KAR 44:090			401 KAR 100:010		
Amended	2031	See 44 Ky.R.	Repealed	1906	8-4-2017
201 KAR 46:035	2077	See 44 Ky.R.	401 KAR 100:011(r)	1906	8-4-2017
201 KAR 46:040			405 KAR 5:095		
Amended	1648		Amended	1869	See 44 Ky.R.
Am Comments	1987	See 44 Ky.R.	405 KAR 7:091		
201 KAR 46:060			Repealed	1907	8-4-2017
Amended	1651	7-17-2017	405 KAR 7:092		
201 KAR 46:070			Amended	1876	See 44 Ky.R.
Amended	1653	See 44 Ky.R.	405 KAR 7:093(r)	1907	8-4-2017
201 KAR 46:090			501 KAR 1:030		
Amended	1654	See 44 Ky.R.	Amended	2209	See 44 Ky.R.
301 KAR 2:075			501 KAR 6:040		
Amended	1848		Amended	1889	
As Amended	2127	7-6-2017	As Amended	2134	7-7-2017
301 KAR 2:083			501 KAR 6:140		
Amended	1850	7-6-2017	Amended	2212	See 44 Ky.R.
301 KAR 2:178			505 KAR 1:130		
Amended	1661		Amended	2214	See 44 Ky.R.
As Amended	2128	7-6-2017	601 KAR 1:018		
301 KAR 2:221			Amended	1890	7-7-2017
Amended	2032	7-6-2017	601 KAR 1:113		
301 KAR 2:222			Amended	2056	See 44 Ky.R.
Amended	2195	8-3-2017	601 KAR 2:030		
301 KAR 2:225			Amended	2216	
Amended	2199	8-3-2017	725 KAR 2:060		
301 KAR 2:300			Amended	2060	
Amended	2034	See 44 Ky.R.	Withdrawn	**	6-5-2017
301 KAR 3:022			725 KAR 2:070		
Amended	2038	See 44 Ky.R.	Amended	2063	See 44 Ky.R.
400 KAR 1:001			787 KAR 1:070		
Amended	1853	See 44 Ky.R.	Amended	612	See 44 Ky.R.
400 KAR 1:030			787 KAR 2:040		
Repealed	1901	8-4-2017	Amended	2065	See 44 Ky.R.
400 KAR 1:031(r)	1901	8-4-2017	804 KAR 4:230		
400 KAR 1:090			Amended	2222	See 44 Ky.R.
Amended	1855		804 KAR 10:010		
Am Comments	2164	See 44 Ky.R.	Amended	2224	
400 KAR 1:100	1902	See 44 Ky.R.	As Amended		See 44 Ky.R.
401 KAR 8:010			806 KAR 17:575	2079	See 44 Ky.R.
Amended	2040	9-8-2017	815 KAR 7:120		
401 KAR 8:011(r)	2078	9-8-2017	Amended	2067	See 44 Ky.R.
401 KAR 8:020			900 KAR 6:125		
Amended	2043	See 44 Ky.R.	Amended	2225	See 44 Ky.R.
401 KAR 8:040			900 KAR 7:030		
Amended	2047	9-8-2017	Amended	2228	See 44 Ky.R.
401 KAR 8:070			900 KAR 7:040		
Repealed	2078	9-8-2017	Amended	2232	See 44 Ky.R.
401 KAR 8:075			900 KAR 10:041(r)	1908	6-21-2017
Amended	2049	See 44 Ky.R.	900 KAR 10:050		
401 KAR 8:100			Repealed	1908	6-21-2017
Amended	2051	See 44 Ky.R.	900 KAR 10:060		
401 KAR 8:101			Repealed	1908	6-21-2017
Repealed	2078	9-8-2017	901 KAR 5:060		
401 KAR 8:250			Repealed	2242	8-16-2017
Amended	2055	9-8-2017	901 KAR 5:061(r)	2242	8-16-2017
401 KAR 8:550			901 KAR 5:120	2243	See 44 Ky.R.
Repealed	2078	9-8-2017	902 KAR 2:060		
401 KAR 8:600			Amended	1454	



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Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
Am Comments	1989		Amended	2234	See 44 Ky.R.
As Amended	2143	See 44 Ky.R.	906 KAR 1:080		
902 KAR 20:053(r)	2082	7-17-2017	Repealed	2086	7-17-2017
902 KAR 20:054			906 KAR 1:081(r)	2086	7-17-2017
Repealed	2082	7-17-2017	906 KAR 1:090		
902 KAR 21:030	1910		Repealed	2086	7-17-2017
As Amended	2148	6-21-2017	906 KAR 1:091(r)	2087	7-17-2017
902 KAR 22:010			907 KAR 1:065		
Repealed	2084	7-17-2017	Amended	1485	
902 KAR 22:011(r)	2084	7-17-2017	Am Comments	1997	
902 KAR 22:030			As Amended	2149	7-7-2017
Repealed	2084	7-17-2017	907 KAR 23:001	2088	10-6-2017
902 KAR 55:075			907 KAR 23:010	2091	See 44 Ky.R.
Repealed	2085	7-17-2017	907 KAR 23:020	2096	See 44 Ky.R.
902 KAR 55:076(r)	2085	7-17-2017	910 KAR 1:210		
902 KAR 55:100			Amended	2070	7-17-2017
Repealed	2085	7-17-2017			
902 KAR 95:040					

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- \*\*\* Withdrawn before being printed in Register
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

**LOCATOR INDEX - EFFECTIVE DATES**

Regulation Number	44 Ky.R. Page No.	Effective Date	Regulation Number	44 Ky.R. Page No.	Effective Date
<b>VOLUME 44</b>					
<b>EMERGENCY ADMINISTRATIVE REGULATIONS</b>					
(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.)					
17 KAR 3:020E	494	8-1-2017	As Amended	213	9-1-2017
32 KAR 1:020E	496	8-15-2017	30 KAR 5:060		See 43 Ky.R.
32 KAR 1:045E	876	9-29-2017	As Amended	214	9-1-2017
101 KAR 2:210E	725	9-15-2017	31 KAR 4:010		
201 KAR 2:390E	498	8-15-2017	Amended	112	
201 KAR 2:400E	500	8-15-2017	As Amended	510	10-6-2017
201 KAR 12:082E	877	10-13-2017	31 KAR 4:040		
201 KAR 20:505E	727	9-12-2017	Amended	113	10-6-2017
301 KAR 1:152E	4	5-26-2017	31 KAR 6:020		
Replaced	132	9-8-2017	Amended	114	10-6-2017
501 KAR 1:030E	See 43 Ky.R.	4-17-2017	32 KAR 1:020		
Replaced	218	9-1-2017	Amended	550	
501 KAR 6:270E	183	6-28-2017	32 KAR 1:045	1170	
803 KAR 2:425E	185	6-26-2017	40 KAR 2:145		See 43 Ky.R.
900 KAR 11:010E	187	6-29-2017	As Amended	9	8-4-2017
902 KAR 20:360E	191	6-16-2017	40 KAR 2:150		See 43 Ky.R.
907 KAR 3:066E	6	6-14-2017	As Amended	10	8-4-2017
Replaced	152	10-6-2017	45 KAR 1:030		
907 KAR 23:010E	See 43 Ky.R.	3-31-2017	Amended	258	
Replaced		10-6-2017	45 KAR 1:040		
907 KAR 23:020E	See 43 Ky.R.	3-31-2017	Amended	260	
Replaced		10-6-2017	45 KAR 1:050		
921 KAR 2:040E	881	9-29-2017	Amended	262	
921 KAR 3:090E	883	9-29-2017	As Amended	729	
922 KAR 1:140E	199	6-29-2017	101 KAR 2:210		
922 KAR 1:490E	203	6-29-2017	Amended	769	
922 KAR 1:550E	207	6-29-2017	102 KAR 1:070		
922 KAR 2:160E	886	9-29-2017	Amended	264	
922 KAR 2:260E	895	9-29-2017	As Amended	903	
			103 KAR 1:120	833	
			103 KAR 15:050		
			Amended	1089	
			103 KAR 16:240		
			Amended	1091	
			103 KAR 16:360		
			Amended	1094	
			103 KAR 16:391(r)	835	
			103 KAR 17:151(r)	836	
			103 KAR 18:070		
			Amended	1096	
			103 KAR 26:110		
			Amended	770	
			103 KAR 26:120		
			Amended	1097	
			103 KAR 27:180		
			Amended	1100	
			103 KAR 28:051		
			Amended	1101	
			103 KAR 28:150		
			Amended	772	
			103 KAR 30:235		
			Amended	1103	
			103 KAR 31:030		
			Amended	1105	
			103 KAR 31:050		
			Amended	774	
			103 KAR 31:102		
			Amended	1107	
			103 KAR 31:111		
			Amended	1109	
			103 KAR 31:170		
			Amended	1110	
			103 KAR 31:180		
			Amended	775	
			103 KAR 31:190		
			Amended	777	
			103 KAR 31:200		
			Amended	778	
<b>ORDINARY ADMINISTRATIVE REGULATIONS</b>					
4 KAR 1:010		See 43 Ky.R.			
As Amended	210	9-1-2017			
4 KAR 1:040		See 43 Ky.R.			
As Amended	211	9-1-2017			
4 KAR 1:050		See 43 Ky.R.			
As Amended	212	9-1-2017			
11 KAR 15:090					
Amended	107				
As Amended	502	10-6-2017			
13 KAR 2:120	443				
As Amended	899				
13 KAR 2:130	445				
As Amended	900				
13 KAR 3:050					
Amended	257				
As Amended	901				
16 KAR 1:015	698				
16 KAR 2:020		See 43 Ky.R.			
Am Comments	225				
As Amended	505	10-6-2017			
16 KAR 5:020		See 43 Ky.R.			
Am Comments	228				
As Amended	508	10-6-2017			
16 KAR 8:040		See 43 Ky.R.			
Am Comments	231	10-6-2017			
17 KAR 3:020					
Amended	548				
As Amended	902				
30 KAR 2:010		See 43 Ky.R.			

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<b>Regulation Number</b>	<b>44 Ky.R. Page No.</b>	<b>Effective Date</b>	<b>Regulation Number</b>	<b>44 Ky.R. Page No.</b>	<b>Effective Date</b>
103 KAR 41:120			201 KAR 26:155		See 43 Ky.R.
Amended	1112		As Amended	24	7-17-2017
103 KAR 44:060			201 KAR 26:160		See 43 Ky.R.
Amended	780		As Amended	25	7-17-2017
103 KAR 44:070			201 KAR 26:165		See 43 Ky.R.
Amended	782		As Amended	26	7-17-2017
103 KAR 44:100			201 KAR 26:171		See 43 Ky.R.
Amended	783		As Amended	26	7-17-2017
103 KAR 44:120			201 KAR 26:175		See 43 Ky.R.
Amended	785		As Amended	29	7-17-2017
103 KAR 50:021(r)	837		201 KAR 26:180		See 43 Ky.R.
106 KAR 2:040	162		As Amended	31	7-17-2017
As Amended	904		201 KAR 26:185		See 43 Ky.R.
200 KAR 38:021(r)	839		As Amended	32	7-17-2017
201 KAR 2:074		See 43 Ky.R.	201 KAR 26:190		See 43 Ky.R.
As Amended	15	7-17-2017	As Amended	32	7-17-2017
201 KAR 2:076		See 43 Ky.R.	201 KAR 26:200		See 43 Ky.R.
As Amended	510	9-20-2017	As Amended	34	7-17-2017
201 KAR 2:380	447		201 KAR 26:210		See 43 Ky.R.
Am Comments	961		As Amended	35	7-17-2017
201 KAR 2:390	699		201 KAR 26:215		See 43 Ky.R.
201 KAR 2:400	701		As Amended	36	7-17-2017
201 KAR 9:260			201 KAR 26:225		See 43 Ky.R.
Amended	265		As Amended	37	7-17-2017
Am Comments	736		201 KAR 26:250		See 43 Ky.R.
As Amended	905		As Amended	38	7-17-2017
201 KAR 12:082			201 KAR 26:280		See 43 Ky.R.
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**SYMBOL KEY:**

- \* Statement of Consideration not filed by deadline
- \*\* Withdrawn, not in effect within 1 year of publication
- \*\*\* Withdrawn before being printed in Register
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- (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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149.350	402 KAR 3:030		301 KAR 2:081
149.355	402 KAR 3:030	150.995	301 KAR 2:049
150.010	301 KAR 1:130	154.27-010	103 KAR 31:190
	301 KAR 1:152	154.27-070	103 KAR 31:190
	301 KAR 1:155	154.030-010	103 KAR 31:180
	301 KAR 1:201	154A.130	11 KAR 15:090
	301 KAR 1:410	156.010	11 KAR 15:090
	301 KAR 2:049	156.070	702 KAR 7:065
150.015	301 KAR 2:075	156.557	704 KAR 3:370
	301 KAR 2:081	156.800	704 KAR 3:370
150.021	301 KAR 2:075	156.808	780 KAR 3:072
150.025	301 KAR 1:086		780 KAR 3:080

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158.007	11 KAR 15:090	164.7871	11 KAR 15:090
158.135	13 KAR 3:050	164.7874	11 KAR 15:090
158.143	13 KAR 3:050	164.7877	11 KAR 15:090
158.148	704 KAR 7:051	164.7879	11 KAR 15:090
158.150	704 KAR 7:051	164.7881	11 KAR 15:090
158.645	703 KAR 5:270	164.7885	11 KAR 15:090
158.6451	703 KAR 5:270	164.7889	11 KAR 15:090
158.6453	703 KAR 5:270	171.250	725 KAR 2:070
158.6455	13 KAR 3:050	171.260	725 KAR 2:070
	703 KAR 5:270	171.270	725 KAR 2:070
159.140	922 KAR 1:330	174.504	602 KAR 15:030
160.151	922 KAR 1:470	183.011	602 KAR 15:030
160.1590	701 KAR 8:010	186.010	601 KAR 23:020
	701 KAR 8:020	186.020	601 KAR 23:020
	701 KAR 8:030	186.450	922 KAR 1:550
	701 KAR 8:040	186.470	922 KAR 1:550
160.1591	701 KAR 8:010	186.480	922 KAR 1:550
	701 KAR 8:020	186.590	922 KAR 1:550
	701 KAR 8:030	186A.070	601 KAR 23:020
	701 KAR 8:040	186A.073	601 KAR 23:020
160.1592	701 KAR 8:010	186A.115	601 KAR 23:020
	701 KAR 8:020	186A.170	601 KAR 23:020
	701 KAR 8:030	189.150	902 KAR 100:180
	701 KAR 8:040	189A.050	200 KAR 38:021
160.1593	701 KAR 8:010	189A.103	500 KAR 8:010
	701 KAR 8:020		500 KAR 8:030
	701 KAR 8:030	194A	922 KAR 5:111
	701 KAR 8:040	194A.005	922 KAR 1:320
160.1594	701 KAR 8:010		922 KAR 1:330
	701 KAR 8:020		922 KAR 1:480
	701 KAR 8:030		922 KAR 2:260
	701 KAR 8:040	194A.030	922 KAR 1:320
160.1595	701 KAR 8:010		922 KAR 2:260
	701 KAR 8:020	194A.050	900 KAR 10:031
	701 KAR 8:030	194A.060	922 KAR 2:160
	701 KAR 8:040		922 KAR 5:040
160.1596	701 KAR 8:010	194A.209	922 KAR 5:090
	701 KAR 8:020	194A.540	201 KAR 36:030
	701 KAR 8:030	194A.550	922 KAR 5:040
	701 KAR 8:040	196	501 KAR 6:110
160.1597	701 KAR 8:010		501 KAR 6:230
	701 KAR 8:020		501 KAR 6:270
	701 KAR 8:030	197	501 KAR 6:110
	701 KAR 8:040		501 KAR 6:230
160.1598	701 KAR 8:010		501 KAR 6:270
	701 KAR 8:020	198B.050	922 KAR 5:040
	701 KAR 8:030	199.011	922 KAR 1:140
	701 KAR 8:040		922 KAR 1:320
160.1599	701 KAR 8:010		922 KAR 1:490
	701 KAR 8:020		922 KAR 1:550
	701 KAR 8:030	199.462	922 KAR 1:140
	701 KAR 8:040		922 KAR 1:490
160.380	702 KAR 7:065	199.466	922 KAR 1:470
	922 KAR 1:470	199.555	922 KAR 1:140
160.445	702 KAR 7:065		922 KAR 1:320
161.020	16 KAR 1:015	199.557	922 KAR 1:140
161.028	16 KAR 1:015		922 KAR 1:320
161.030	16 KAR 1:015	199.801	922 KAR 1:140
161.141	701 KAR 8:010	199.892	922 KAR 2:160
	701 KAR 8:020	199.894	922 KAR 2:160
	701 KAR 8:040	199.896	922 KAR 1:470
161.600	102 KAR 1:070		922 KAR 2:160
161.605	102 KAR 1:070	199.898	922 KAR 2:160
161.640	102 KAR 1:070	199.8982	922 KAR 1:470
161.675	102 KAR 1:070		922 KAR 2:160
161.740	704 KAR 3:370	199.899	922 KAR 2:160
164.001	13 KAR 2:120	199.8994	922 KAR 2:160
	13 KAR 2:130	200.080 – 200.120	505 KAR 1:130
164.002	11 KAR 15:090	202A.011	922 KAR 1:330
164.092	13 KAR 2:120	205.455	922 KAR 5:040
	13 KAR 2:130	205.510	907 KAR 3:005
164.0064	13 KAR 3:050	205.520	907 KAR 1:045
164.772	201 KAR 22:020		907 KAR 1:047
	201 KAR 22:040		907 KAR 1:102

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	907 KAR 1:104	218A.010	902 KAR 55:015
	907 KAR 1:479		902 KAR 55:110
	907 KAR 3:005	218A.020	902 KAR 55:015
205.560	907 KAR 3:066	218A.020 - 218A.130	902 KAR 55:040
	907 KAR 1:479		902 KAR 55:041
	907 KAR 3:005	218A.040	902 KAR 55:015
205.565	907 KAR 3:010	218A.060	902 KAR 55:015
205.622	907 KAR 3:010	218A.070	902 KAR 55:095
	907 KAR 1:047	218A.080	902 KAR 55:015
	907 KAR 1:102	218A.100	902 KAR 55:015
	907 KAR 3:005	218A.120	902 KAR 55:015
205.2005	921 KAR 3:025	218A.180	902 KAR 55:095
205.8451	907 KAR 1:045	218A.200	902 KAR 55:095
	907 KAR 1:047	218A.202	902 KAR 55:110
	907 KAR 1:102	218A.205	201 KAR 9:260
	907 KAR 3:005		201 KAR 20:057
209	922 KAR 5:090	218A.240	902 KAR 55:110
	922 KAR 5:111(r)	224	401 KAR 61:015
209.020	922 KAR 1:320		902 KAR 100:180
	922 KAR 5:040	224.1	401 KAR 31:002
209.030	922 KAR 5:040		401 KAR 32:002
209.140	922 KAR 5:040		401 KAR 33:002
209A	922 KAR 5:040		401 KAR 34:002
	922 KAR 5:111(r)		401 KAR 35:002
209A.020	922 KAR 1:320		401 KAR 36:002
	922 KAR 5:090		401 KAR 37:002
210.366	201 KAR 28:200		401 KAR 38:002
	201 KAR 36:030		401 KAR 39:005
210.370 - 210.485	907 KAR 1:045		401 KAR 39:120
	907 KAR 1:047		401 KAR 43:002
	907 KAR 3:010		401 KAR 45:060
211.350 - 211.380	922 KAR 5:040		401 KAR 48:005
211.680 - 211.686	922 KAR 1:421		401 KAR 48:090
211.684	922 KAR 1:330	224.10	401 KAR 31:002
	922 KAR 1:490		401 KAR 32:002
211.842 - 211.990	902 KAR 100:180		401 KAR 33:002
211.892	805 KAR 1:060		401 KAR 34:002
211.893	805 KAR 1:060		401 KAR 35:002
213.101	902 KAR 20:360		401 KAR 36:002
214.036	922 KAR 1:330		401 KAR 37:002
	922 KAR 2:160		401 KAR 38:002
216.510	902 KAR 55:095		401 KAR 39:005
216B.010 - 216B.130	900 KAR 5:020		401 KAR 39:011
	902 KAR 20:360		401 KAR 39:060
216B.015	900 KAR 6:090		401 KAR 39:080
216B.020	900 KAR 6:090		401 KAR 39:090
216B.040	900 KAR 6:090		401 KAR 39:120
216B.042	902 KAR 55:095		401 KAR 43:002
216B.050	902 KAR 100:180		401 KAR 44:002
216B.062	900 KAR 6:090		401 KAR 45:060
216B.095	900 KAR 6:090		401 KAR 48:005
216B.990	900 KAR 6:090		401 KAR 48:090
	902 KAR 20:360		401 KAR 59:015
216C.010	900 KAR 11:010	224.10-100	402 KAR 3:030
216C.030	900 KAR 11:010	224.40	401 KAR 31:002
216C.040	900 KAR 11:010		401 KAR 32:002
216C.050	900 KAR 11:010		401 KAR 33:002
216C.060	900 KAR 11:010		401 KAR 34:002
216C.070	900 KAR 11:010		401 KAR 35:002
216C.080	900 KAR 11:010		401 KAR 36:002
216C.090	900 KAR 11:010		401 KAR 37:002
216C.100	900 KAR 11:010		401 KAR 38:002
216C.110	900 KAR 11:010		401 KAR 39:120
216C.120	900 KAR 11:010		401 KAR 43:002
216C.160	900 KAR 11:010		401 KAR 44:002
216C.170	900 KAR 11:010		401 KAR 45:060
216C.180	900 KAR 11:010		401 KAR 48:005
216C.200	900 KAR 11:010		401 KAR 48:090
216C.210	900 KAR 11:010	224.40-310	410 KAR 1:002
216C.220	900 KAR 11:010	224.43	401 KAR 31:002
216C.230	900 KAR 11:010		401 KAR 34:002
217.005 - 217.215	902 KAR 55:015		401 KAR 35:002
	902 KAR 55:041		401 KAR 36:002
217.015	301 KAR 1:155		401 KAR 37:002

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	401 KAR 38:002	236.030	815 KAR 15:026
	401 KAR 43:002	236.110	815 KAR 15:026
	401 KAR 44:002	236.240	815 KAR 15:026
	401 KAR 48:005	236.250	815 KAR 15:026
	401 KAR 48:090	236.990	815 KAR 15:026
224.43-815	410 KAR 1:002	241.020	804 KAR 6:020
224.46	401 KAR 31:002	241.060	804 KAR 4:400
	401 KAR 32:002		804 KAR 4:410
	401 KAR 33:002	243.090	804 KAR 4:390
	401 KAR 34:002		804 KAR 4:400
	401 KAR 35:002		804 KAR 6:020
	401 KAR 36:002	2430200	804 KAR 8:050
	401 KAR 37:002	243.380	804 KAR 4:400
	401 KAR 38:002		804 KAR 4:410
	401 KAR 39:005	243.390	804 KAR 4:400
	401 KAR 39:011		804 KAR 4:410
	401 KAR 39:060	243.630	804 KAR 4:400
	401 KAR 39:080	244.080	804 KAR 5:070
	401 KAR 39:090	244.085	804 KAR 5:070
	401 KAR 39:120	244.090	804 KAR 5:070
	401 KAR 43:002	247	302 KAR 17:010
	401 KAR 44:002	281.010	907 KAR 3:066
	401 KAR 45:060	281.605	907 KAR 3:066
224.46-505	410 KAR 1:002	281.635	907 KAR 3:066
224.46-510	410 KAR 1:002	281.872	907 KAR 3:066
224.46-520	410 KAR 1:002	281.875	907 KAR 3:066
224.46-810	410 KAR 1:002	304.2-105	806 KAR 3:210
224.46-820	410 KAR 1:002	304.2-180	806 KAR:011
224.46-825	410 KAR 1:002	304.3-100	806 KAR:011
224.46-830	410 KAR 1:002	304.3-240	806 KAR:011
224.46-840	410 KAR 1:002	304.5-010	806 KAR 5:031
224.46-850	410 KAR 1:002	304.5-080	806 KAR 5:031
224.46-860	410 KAR 1:002	304.7-340	806 KAR 7:011
224.46-870	410 KAR 1:002	304 - 9	806 KAR 9:051
224.50	401 KAR 34:002	304.9 - 030	806 KAR 5:031
	401 KAR 35:002	304.9 - 390	806 KAR 9:051
	401 KAR 38:002	304.24 - 410	806 KAR 24:022
	401 KAR 39:120	304.39-060	806 KAR 39:030
	401 KAR 44:002	309.0814	201 KAR 35:070
	401 KAR 45:060	309.083	201 KAR 35:055
	401 KAR 48:005		201 KAR 35:070
224.50-130	401 KAR 31:002	309.0831	201 KAR 35:055
224.50-760	410 KAR 1:002		201 KAR 35:070
224.70	401 KAR 34:002	309.0832	201 KAR 35:070
	401 KAR 37:002	309.0833	201 KAR 35:070
224.71-110	402 KAR 3:030	309.085	201 KAR 35:040
224.71-120	402 KAR 3:030	309.331	201 KAR 45:110
224.99	401 KAR 31:002		201 KAR 45:120
	401 KAR 32:002		201 KAR 45:170
	401 KAR 33:002	309.334	201 KAR 45:120
	401 KAR 34:002		201 KAR 45:170
	401 KAR 35:002	309.335	201 KAR 45:071
	401 KAR 36:002		201 KAR 45:120
	401 KAR 37:002		201 KAR 45:170
	401 KAR 38:002	309.336	201 KAR 45:170
	401 KAR 39:011	309.0813	201 KAR 35:080
	401 KAR 39:060	310.005	201 KAR 33:015
	401 KAR 39:080	310.021	201 KAR 33:015
	401 KAR 39:090	310.031	201 KAR 33:015
	401 KAR 39:120	311.530 - 311.620	201 KAR 9:260
	401 KAR 45:060	311.710 - 311.830	902 KAR 20:360
	401 KAR 48:005	311.840	907 KAR 3:010
	401 KAR 48:090	311.840 - 311.862	907 KAR 3:005
224.500	804 KAR 11:010	311.990	201 KAR 9:260
224.590	804 KAR 11:010	314.011	201 KAR 20:057
235.040	301 KAR 6:005		201 KAR 20:065
235.050	301 KAR 6:005		902 KAR 20:360
235.070	301 KAR 6:005		907 KAR 1:102
235.080	301 KAR 6:005		907 KAR 1:104
236	815 KAR 15:010		907 KAR 3:005
	815 KAR 15:025		922 KAR 2:160
	815 KAR 15:027	314.042	201 KAR 20:057
	815 KAR 15:041		201 KAR 20:065
236.010	815 KAR 15:026		902 KAR 20:360

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314.175	201 KAR 20:505E	335.540	201 KAR 36:050
314.193	201 KAR 20:057	335.545	201 KAR 36:050
314.196	201 KAR 20:057	336.165	803 KAR 6:011
315.002	201 KAR 2:390	336.1661	803 KAR 3:051
	201 KAR 2:400	336.1662	803 KAR 3:051
315.005	201 KAR 2:390	336.1663	803 KAR 3:051
	201 KAR 2:400	336.1664	803 KAR 3:051
315.010	201 KAR 2:380	337	780 KAR 3:072
	201 KAR 2:400		803 KAR 1:121
315.191	201 KAR 2:380	337.275	922 KAR 2:160
	201 KAR 2:390	339.210 - 339.450	803 KAR 1:100
	201 KAR 2:400	341.020	103 KAR 18:070
315.340	201 KAR 2:400	341.090	103 KAR 18:070
315.342	201 KAR 2:400	341.395	103 KAR 18:070
315.400	201 KAR 2:390	349.025	805 KAR 9:041
315.4102	201 KAR 2:390	350	405 KAR 7:001
315.4104	201 KAR 2:390		405 KAR 8:001
315.4106	201 KAR 2:390		405 KAR 10:001
315.4108	201 KAR 2:390		405 KAR 12:001
315.4110	201 KAR 2:390		405 KAR 16:001
316.010	201 KAR 15:110		405 KAR 18:001
316.030	201 KAR 15:050		405 KAR 20:001
	201 KAR 15:110	350.010	405 KAR 20:080
316.125	201 KAR 15:030	350.020	405 KAR 8:010
	201 KAR 15:110		405 KAR 18:010
316.127	201 KAR 15:110		405 KAR 18:260
316.130	201 KAR 15:030	350.028	405 KAR 18:260
316.132	201 KAR 15:030	350.055	405 KAR 8:010
316.140	201 KAR 15:030	350.060	405 KAR 8:010
317A.020	201 KAR 12:082		405 KAR 8:040
317A.050	201 KAR 12:082	350.070	405 KAR 8:010
317A.090	201 KAR 12:082	350.085	405 KAR 8:010
319A.010	907 KAR 1:047	350.090	405 KAR 8:010
319A.070	201 KAR 28:200		405 KAR 18:010
319A.080	201 KAR 28:235	350.093	405 KAR 8:050
319A.160	201 KAR 28:200		405 KAR 18:010
319A.300	201 KAR 28:235	350.100	405 KAR 16:110
322.010	401 KAR 34:002		405 KAR 18:060
	401 KAR 35:002		405 KAR 18:110
	401 KAR 39:005	350.130	405 KAR 8:010
	405 KAR 8:010	350.135	405 KAR 8:010
322.340	405 KAR 8:010	350.151	405 KAR 8:040
322A.050	201 KAR 31:010		405 KAR 18:010
322A.060	201 KAR 31:010		405 KAR 18:040
322A.070	201 KAR 31:010		405 KAR 18:060
326.020	201 KAR 13:040		405 KAR 18:110
	201 KAR 13:060		405 KAR 18:260
326.035	201 KAR 13:040		405 KAR 20:080
326.040	201 KAR 13:040		405 KAR 20:090
	201 KAR 13:060	350.405	405 KAR 16:110
326.080	201 KAR 13:040		405 KAR 18:110
327.010	201 KAR 22:020	350.410	405 KAR 18:010
	907 KAR 1:047	350.420	405 KAR 16:110
327.050	201 KAR 22:020		405 KAR 18:040
	201 KAR 22:040		405 KAR 18:060
	201 KAR 22:070		405 KAR 18:110
327.060	201 KAR 22:070	350.421	405 KAR 8:040
327.070	201 KAR 22:040		405 KAR 18:060
327.075	201 KAR 22:020	350.440	405 KAR 18:010
327.080	201 KAR 22:020		405 KAR 18:060
327.310	201 KAR 22:020	350.450	405 KAR 8:010
333	902 KAR 20:360	350.445	405 KAR 8:050
334A.020	907 KAR 1:047	350.450	405 KAR 8:050
335.500	201 KAR 36:060	350.465	405 KAR 8:010
	201 KAR 36:065		405 KAR 8:050
	201 KAR 36:070		405 KAR 16:110
335.500 - 335.599	201 KAR 36:030		405 KAR 18:010
335.505	201 KAR 36:060		405 KAR 18:040
	201 KAR 36:065		405 KAR 18:060
335.515	201 KAR 36:072		405 KAR 18:110
335.525	201 KAR 36:060		405 KAR 18:260
	201 KAR 36:065		405 KAR 20:080
	201 KAR 36:070		405 KAR 20:090
335.527	201 KAR 36:070	350.500-350.521	405 KAR 8:010

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350.990	405 KAR 7:095		922 KAR 1:480
351.102	805 KAR 7:020		922 KAR 1:490
351.103	805 KAR 7:040		922 KAR 5:040
	805 KAR 7:050	620.060	922 KAR 1:140
351.106	805 KAR 7:030	620.070	922 KAR 1:330
351.1041	805 KAR 8:030	620.072	922 KAR 1:330
	805 KAR 8:040		922 KAR 1:430
	805 KAR 8:050	620.090	922 KAR 1:140
351.120	805 KAR 8:030	620.140	922 KAR 1:140
	805 KAR 8:040	620.180	922 KAR 1:140
351.194	805 KAR 8:030		922 KAR 1:320
	805 KAR 8:040	620.230	922 KAR 1:320
	805 KAR 8:050	620.350	922 KAR 1:330
352	902 KAR 100:180	620.990	922 KAR 1:330
352.010-352.540	805 KAR 8:030	625	922 KAR 1:490
	805 KAR 8:040	625.040	922 KAR 1:140
	805 KAR 8:050	625.050 - 625.120	922 KAR 1:470
353.110	805 KAR 1:071	625.090	922 KAR 1:140
353.120	805 KAR 1:071	7 C.F.R.	405 KAR 7:001
353.170	805 KAR 1:071		405 KAR 8:001
353.180	805 KAR 1:060		405 KAR 8:040
353.550	805 KAR 1:060		405 KAR 10:001
	805 KAR 1:071		405 KAR 16:001
353.739	805 KAR 1:071		405 KAR 18:001
369.101 - 369.120	907 KAR 1:047		405 KAR 20:001
	907 KAR 1:102		921 KAR 3:025
	907 KAR 3:005		921 KAR 3:042
387.025	922 KAR 1:140		921 KAR 3:045
403.352	922 KAR 1:470		921 KAR 3:090
403.720	922 KAR 5:040		922 KAR 2:160
	922 KAR 5:090	16 C.F.R.	201 KAR 15:110
424.110-424.120	405 KAR 8:010	20 C.F.R.	922 KAR 2:160
431.600	922 KAR 1:330	21 C.F.R.	902 KAR 55:015
439	501 KAR 6:110		902 KAR 55:040
	501 KAR 6:230		902 KAR 55:041
	501 KAR 6:270		902 KAR 55:095
440.170	907 KAR 3:066	27 C.F.R.	405 KAR 8:010
503.110	922 KAR 1:330	28 C.F.R.	505 KAR 1:170
527.100	922 KAR 1:140	29 C.F.R.	780 KAR 3:072
527.110	922 KAR 1:140		803 KAR 1:100
529.010	922 KAR 1:330		803 KAR 2:425
600 - 645	505 KAR 1:130		902 KAR 20:360
	505 KAR 1:170	30 C.F.R.	405 KAR 7:001
600.010	922 KAR 1:330		405 KAR 7:095
	922 KAR 1:430		405 KAR 8:001
600.020	922 KAR 1:140		405 KAR 8:010
	922 KAR 1:320		405 KAR 8:040
	922 KAR 1:330		405 KAR 10:001
	922 KAR 1:430		405 KAR 12:001
	922 KAR 1:470		405 KAR 16:001
	922 KAR 1:480		405 KAR 18:001
	922 KAR 1:490		405 KAR 18:010
	922 KAR 2:160		405 KAR 18:060
605.090	922 KAR 1:320		405 KAR 20:001
	922 KAR 1:330	34 C.F.R.	922 KAR 2:160
	922 KAR 1:490	40 C.F.R.	401 KAR 31:002
605.102	922 KAR 1:550		401 KAR 32:002
605.120	922 KAR 1:490		401 KAR 33:002
	922 KAR 2:160		401 KAR 34:002
605.130	922 KAR 1:330		401 KAR 35:002
	922 KAR 1:430		401 KAR 36:002
	922 KAR 1:490		401 KAR 37:002
610.010	922 KAR 1:330		401 KAR 38:002
610.110	922 KAR 1:140		401 KAR 39:005
610.125	922 KAR 1:140		401 KAR 39:011
610.127	922 KAR 1:140		401 KAR 39:060
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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).

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103 KAR 18:120	6-22-2017		
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405 KAR 5:082	6-27-2017		
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907 KAR 1:054	10-6-2017		
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