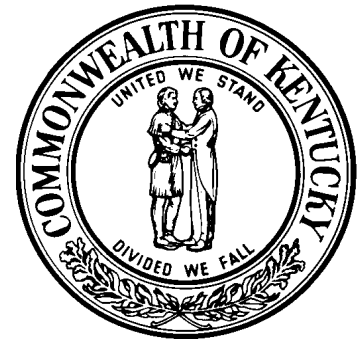


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 38, NUMBER 8
WEDNESDAY, FEBRUARY 1, 2012

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MEETING NOTICE: ARRS

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet February 13, 2012 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 1417-1419 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2011 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, FEBRUARY 13, 2012, at 1:00 p.m., Room 149 Capitol Annex**

EDUCATION PROFESSIONAL STANDARDS BOARD

Educator Preparation

16 KAR 5:020. Standards for admission to educator preparation. (Not Amended After Comments)

PERSONNEL CABINET

Personnel Cabinet, Classified

101 KAR 2:102. Classified leave administrative regulations. (Deferred from January)

101 KAR 2:140. Workers' Compensation Fund and Program. (Deferred from January)

Personnel Cabinet, Unclassified

101 KAR 3:015. Leave administrative regulations for the unclassified service. (Deferred from January)

FINANCE AND ADMINISTRATION CABINET

**Department of Revenue
Office of Income Taxation**

Forms

103 KAR 3:040 & E. Income Tax Forms Manual. ("E" expires 6/6/2012)

GENERAL GOVERNMENT CABINET

Board of Nursing

Board

201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization.

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

Board of Physical Therapy

Board

201 KAR 22:020. Eligibility and credentialing procedure.

201 KAR 22:070. Requirements for foreign-educated physical therapists.

Real Estate Appraisers Board

Board

201 KAR 30:375. Appraisal procedures for appraisal management companies. (Amended After Comments)

Board of Licensure for Marriage and Family Therapists

Board

201 KAR 32:010. Definitions for 201 KAR Chapter 32.

201 KAR 32:020. Equivalent course of study.

201 KAR 32:025. Marriage and family therapist associate.

201 KAR 32:035. Supervision of marriage and family therapist associates.

201 KAR 32:045. Examination.

201 KAR 32:050. Code of ethics.

201 KAR 32:060. Continuing education requirements.

Board of Licensed Professional Counselors

Board

201 KAR 36:060. Qualifying experience under supervision. (Deferred from December)

201 KAR 36:070. Education and examination requirements. (Deferred from December)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Water Patrol

301 KAR 6:040. Zoning or marking of waterways.

GENERAL GOVERNMENT

**Department of Agriculture
Office of State Veterinarian
Division of Animal Health**

Livestock Sanitation

302 KAR 20:052 & E. Animal Carcass Composting. ("E" expires 5/8/2012) (Deferred from January)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Criminal Justice Training

General Training Provision

503 KAR 3:040. Telecommunications (Public Safety Dispatch) Academy trainee requirements; misconduct; penalties; discipline procedures.

503 KAR 3:050. Telecommunications (Public Safety Dispatch) Academy-CJIS graduation requirements; records.

TRANSPORTATION CABINET

**Department of Vehicle Regulation
Division of Motor Carriers**

Division

601 KAR 1:019. Overweight or overdimensional farm equipment.

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Division of Motor Vehicle Licensing

Motor Vehicle Tax

601 KAR 9:160. Surrender or reactivation of vehicle title.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Board of Education

Department of Education

Kindergartens and Nursery Schools

704 KAR 5:070. Common Kindergarten entry screener.

Department of Workforce Investment

Office for the Blind

Department of the Blind

782 KAR 1:010. Kentucky business enterprises. (Not Amended After Comments)

PUBLIC PROTECTION CABINET

Kentucky Horse Racing Commission

Thoroughbred Racing

810 KAR 1:014. Weights.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

Certificate of Need

900 KAR 6:125. Certificate of Need annual surveys, and registration requirements for new Magnetic Resonance Imaging units.

Data Reporting and Public Use Data Sets

900 KAR 7:030 & E. Data reporting by health care providers. ("E" expires 4/25/2012) (Deferred from January)

Department for Mental Health and Mental Retardation Services

Division of Administration and Financial Management

Institutional Care

908 KAR 3:050. Per diem rates. (Deferred from January)

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, 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 phone and letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

A transcript of the hearing is not required unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, JANUARY 15, 2012

STATEMENT OF EMERGENCY
101 KAR 2:180E

The amendments include the creation of a third interim review period, to appropriately capture the work-related performance during the months of October – December. Previously this performance was captured by additional comments as necessary and attached to the evaluation form. These amendments now provide a formal location within the evaluation form. Additionally, if an employee transfers or changes positions after November 1st in a calendar year, the current evaluator will complete the annual evaluation prior to the change in position. Current language utilizes October 1st; however, this date change is desired to better capture an employee's entire year of performance. Other amendments include clarification regarding what to consider when establishing job duties, and the necessary training that must be completed by supervisors and employees. The evaluation form is updated to reflect these changes, and other technical amendments are made throughout the regulation and form. An ordinary amendment to the administrative regulation is not sufficient for the timely and consistent implementation of the changes to the state employee performance evaluation system. The current regulatory language must remain in effect throughout calendar year 2011 to ensure that the existing requirements and forms are utilized for the 2011 calendar year employee performance. The revisions to the administrative regulation and evaluation forms must be effective January 3, 2012 for supervisors and employees to utilize the proper performance plan documents for calendar year 2012. The emergency amendment will be replaced by an ordinary amended administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 3, 2012. This emergency administrative regulation is identical to the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
TIM LONGMEYER, Secretary
DINAH T. BEVINGTON, Executive Director

PERSONNEL CABINET
(Emergency Amendment)

101 KAR 2:180E. Employee performance evaluation system.

RELATES TO: KRS 18A.110

STATUTORY AUTHORITY: KRS 18A.110(1)(i), (7)(j)

EFFECTIVE: January 3, 2012

NECESSITY, FUNCTION and CONFORMITY: KRS 18A.110(1)(i) and (7)(j) requires the Secretary of the Personnel Cabinet to promulgate comprehensive administrative regulations for classified service employees to establish a uniform system of annual employee evaluations for classified employees. This administrative regulation establishes the uniform employee performance evaluation system.

Section 1. General Provisions. (1) ~~[(a) Except as provided in paragraph (b) of this subsection, the]~~ The annual performance period shall be one (1) calendar year beginning on January 1. ~~[(b) For calendar year 2001, the annual performance period shall be the effective date of this administrative regulation until the end of the calendar year.]~~

(2) Except as provided in subsection (4)(d) of this section, performance evaluations shall be completed no later than thirty (30) calendar days after the end of the annual performance period.

(3) All agencies shall use the Annual Employee Performance Evaluation form.

(4)(a) Except as provided in paragraph (b) or (c) of this subsection, the first line supervisor of an employee at the time the evaluation is due shall be the evaluator.

(b) If the first line supervisor has not supervised the employee for at least sixty (60)[ninety (90)] calendar days during the performance year, the next line supervisor who meets the sixty

(60)[ninety (90)] day requirement shall be the evaluator.

(c) If an employee changes jobs or reports to a different supervisor on or before November 1 of the performance year, the agency shall transfer all performance evaluation documentation for the performance year to the new evaluator for incorporation in the annual evaluation.

(d) If an employee changes jobs or[and] reports to a different supervisor after November 1[October 4] of the performance year, the annual evaluation shall be completed by the former supervisor prior to the job change.

(5)(a) Except as provided in paragraph (b) of this subsection, the evaluator[The first line supervisor (evaluator)] shall establish a performance plan for each eligible employee no later than thirty (30) calendar days after the start of the performance period.

(b) If an employee's position or job title changes during the performance year, the evaluator shall establish a new performance plan no later than thirty (30) calendar days after the start of the position or job title change. The new performance plan shall become a part of the original performance year evaluation documentation.

(6) The evaluator shall meet with the employee when completing the performance plan to discuss job duties and expectations.

(7) Performance evaluations shall be in writing. The evaluator shall:

(a) Present and explain all documentation relevant to an employee's performance evaluation;

(b) Discuss both the positive and negative aspects of performance with the employee at the annual evaluation;

(c) Elicit the employee's opinions and concerns; and

(d) Discuss measures to improve or enhance performance with the employee.

(8) The Personnel Cabinet[Governmental Services Center] or agency personnel shall provide supervisor evaluation training on the performance evaluation system.

(a) The appointing authority shall require that supervisor evaluation training is completed prior to completing performance planning, interim reviews, and annual evaluations[evaluation] of employees.

(b) The Personnel Cabinet shall monitor and validate compliance with supervisor evaluation training requirements.

(9) An employee[Employees] shall complete orientation to the performance evaluation system prior to January 1 of the employee's initial performance evaluation period[no later than thirty (30) calendar days after completion of initial probation].

(10) Except as authorized by the appointing authority, an evaluator shall complete required performance planning, interim reviews, and annual evaluations for each eligible employee. If the appointing authority approves the exception, written justification for the decision shall be placed in the employee's personnel file.

Section 2. Employee Eligibility. Performance evaluations shall be completed for all full-time classified employees with status at the beginning of the performance year who have remained in continuous merit status throughout the performance year.

Section 3. Performance Planning. (1) The performance plan shall specify job responsibilities and expectations in the four (4) categories established in this subsection.[following categories:]

(a) Job tasks.

1. The job tasks category shall identify specific duties and expectations of the position held by the employee.

2. The employee's job duties shall be consistent with the position description.

3. Duties and expectations shall be in writing.

4. The evaluator shall assign points to identified duties and expectations [, weighted by importance].

(b) Adaptability/initiative.

1. The adaptability/initiative category shall identify job requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points weighted by importance.

(c) Communication/teamwork.

1. The communication/teamwork category shall identify requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points weighted by importance.

(d) Self-management.

1. The self-management category shall identify requirements of the agency relating to workplace standards that shall include:

- a. Attendance;
- b. Punctuality;
- c. Career development;
- d. Responsibility; and
- e. Dependability.

2. The evaluator shall place each requirement under this category in writing and assign points weighted by importance.

3. ~~Performance goals and objectives shall relate to the agency's mission.~~ [4.] The evaluator shall develop the performance plan after consultation with the employee.

a. The employee and evaluator shall certify in writing in the performance planning section of the evaluation form that the employee has met with the evaluator and is aware of the performance plan ~~at the start of the evaluation period~~.

b. The next line supervisor shall certify that he or she has reviewed the duties and expectations of the employee and finds them to be reasonable and appropriate based upon the employee's classification ~~equitable considering duties of other employees in the same classification~~.

(2) Total points assigned for all four (4) categories shall equal 100 total points. The evaluator shall distribute points among the four (4) categories as follows:

(a) The job tasks category shall have a minimum of fifty (50) points designated; and

(b) The other three (3) categories shall have a minimum of five (5) points designated to each category.

(3) To obtain the point total for each category, points assigned to each job duty within each category shall be multiplied by the numerical rating ~~one (1) to five (5)~~ provided ~~determined~~ by the evaluator, as described in Section 5(3) of this administrative regulation ~~to complete the final point total for each category~~.

(4) Total points in all four (4) categories shall be added to obtain a final performance evaluation score.

Section 4. Performance Coaching and Feedback. (1) Modification of the performance plan may occur during the performance evaluation period if the changes are consistent with the duties reflected on an employee's position description.

(a) The employee shall be given written notice of changes to the performance plan.

(b) Changes to the performance plan shall be indicated on the evaluation form or on a supplemental sheet attached to the form.

(c) Changes to the performance plan shall be initialed and dated by the evaluator and the employee when changes become effective.

(2) ~~Three (3)~~ Two (2) interim reviews shall be required during a performance year.

(a) The evaluator shall document the interim reviews.

1. Interim reviews shall not contain a rating.

2. The interim meeting section of the evaluation form shall contain comments by the evaluator for each category established in Section 3(1) of this administrative regulation.

(b) The employee and evaluator shall sign the performance evaluation form to certify that the interim reviews occurred.

(c) For consideration in the annual year evaluation, the employee may attach pertinent comments relating to the interim review within five (5) working days of the interim review meeting.

(d) Except as requested by the appointing authority and authorized by the Secretary of Personnel, the evaluator shall schedule interim reviews to discuss performance January 1 through April 30, May 1 through August 31, and September 1 through December 31 ~~during the months of April and August of each performance year~~.

(e) Interim reviews shall be completed no later than thirty (30) calendar days after the end of each interim review period.

(f) ~~(e)~~ Interim reviews shall document performance to justify the annual performance rating.

Section 5. Performance Evaluations and Ratings. (1) Except as provided in Section 1(4)(d) of this administrative regulation, the ~~The~~ evaluator and the employee shall meet no later than thirty (30) calendar days after the performance period ends to discuss the performance ratings.

(2) Eligible employees shall be evaluated in the four (4) categories described in Section 3 of this administrative regulation.

(3) All job duties identified within the categories shall be rated on a scale of one (1) to five (5), with five (5) representing superior performance.

(4) The final performance evaluation shall consist of a defined numerical rating. Point values for the overall performance rating shall be ~~are~~:

(a) Outstanding: 450 to 500 points;

(b) Highly effective: 350 to 449 points;

(c) Good: 250 to 349 points;

(d) Needs Improvement: 150 to 249 points; or

(e) Unacceptable: less than 150 points.

(5) Unresolved disagreements on ratings or any aspect of the performance evaluation shall be reviewed through the reconsideration process established in Section 7 of this administrative regulation.

(6) Signatures of the evaluator, employee and next line supervisor shall be required on the final evaluation.

(a) The next line supervisor shall sign the evaluation after it is completed, signed, and dated by the evaluator and the employee.

(b) For the purpose of evaluating or managing the performance of the evaluator, the next line supervisor's signature shall certify that he or she is aware of the evaluation and has reviewed it.

(c) Exceptions to this requirement may be requested by the appointing authority and shall be subject to the approval of the Secretary of Personnel.

Section 6. Performance Incentives. ~~Employee~~ Annual leave shall be awarded as a performance incentive at the following rates:

(1) Two (2) workdays, not to exceed sixteen (16) hours, for an "Outstanding" rating; or [-]

(2) One (1) workday, not to exceed eight (8) hours, for a "Highly Effective" rating.

Section 7. Reconsideration and Appeal Process. (1) Within five (5) working days of a performance evaluation, an employee may request initial reconsideration of the performance evaluation by the evaluator.

(2) Within five (5) working days of the receipt of the request for reconsideration, the evaluator shall respond to the request in writing.

(3) If the employee refuses to sign the form in the employee response section, the evaluation shall not be eligible for reconsideration.

(4) Within five (5) working days after the initial reconsideration by the evaluator, an employee may submit a written request for reconsideration of the evaluation by the next line supervisor. If neither the evaluator nor the next line supervisor re-ponds ~~respond~~ to the request for reconsideration in the designated time period, the employee may submit a written request to the appointing authority for response to the request for reconsideration and compliance with this administrative regulation.

(5) The next line supervisor shall:

(a) Obtain written statements from both the employee and the evaluator; or

(b) Meet individually with the employee and the evaluator.

(6) The next line supervisor shall inform both the employee and evaluator in writing of the decision no later than fifteen (15) working days after receipt of the employee's request.

(7) Within sixty (60) calendar days after an employee has received the written decision from the next line supervisor, the employee who has complied with this administrative regulation may appeal a final evaluation which has an overall rating in either of the two (2) lowest overall ratings to the Personnel Board.

Section 8. Evaluation-based Agency Action. If an employee receives an overall rating of unacceptable, the agency shall:

(1) Demote the employee to a position commensurate with the

employee's skills and abilities; or

(2) Terminate the employee.

Section 9. Incorporation by Reference. (1) The "Annual Employee Performance Evaluation" ~~[Form]~~, November 2011 ~~[04/04/04]~~, is incorporated by reference.

(2) This material may be inspected, copied ~~[copies]~~, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, Third Floor ~~[200 Fair Oaks Lane, 5th Floor]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: December 29, 2011

FILED WITH LRC: January 3, 2012 at 10 a.m.

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the uniform employee performance evaluation system.

(b) The necessity of this administrative regulation: This regulation is necessary to establish a uniform system of annual employee evaluations for classified employees, and fulfills the secretary's statutory requirements to promulgate comprehensive regulations regarding the evaluation system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A, and this regulation is required pursuant to KRS 18A.110(1)(i) and (7)(j).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently establishes the uniform employee performance evaluation system.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments to the existing regulation will accomplish the following:

Create a third interim review period, to appropriately capture the performance and conduct during the months of October – December;

Provide that if an employee transfers after November 1st in a calendar year, the current evaluator will complete the annual evaluation – the current language utilizes October 1st;

Require a new performance plan must be completed for all employees within 30 days of starting a new position;

Recognize the requirement to complete supervisor training before that individual creates any performance plans or conducts evaluations;

Clarify that the evaluation system is no longer housed within the Governmental Services Center (GSC);

Clarify what should be considered before an employee's duties are established, including the employee's position description; and

Provide updated information to the Annual Performance Evaluation form, including the third interim evaluation period, clarification to the scoring areas, clarification to the signature pages, clarification for employee comments, and use of terminology utilized within the new HR system; and

Remedy technical or drafting within the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to ensure the performance evaluation system is appropriately utilized and serves its intended purpose. Additionally, the amendments incorporate the updated Annual Employee Performance Evaluation form.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030, 18A.110(1)(i) and (7)(j), as well as KRS 13A.2251.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the administration of the statutorily required performance evaluation system. The additional interim period provides a more effective way of capturing and addressing employee work performance, and the amendments to the form assist in the effective completion and review of employee evaluations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A employees, supervisors, and executive branch agencies are required to comply 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: The Personnel Cabinet is responsible for equipping all executive branch agencies with the revised Annual Performance Evaluation form, and providing additional training as necessary. The only additional action required by each regulated entity is the documentation of performance during the last four (4) months each calendar year.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional benefits include the increased guidance and direction regarding how performance may effectively be evaluated.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees:

This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030, 18A.110(1)(i) and (7)(j), and KRS 13A.2251.

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

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

will be generated.

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

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

(d) How much will it cost to administer this program for subsequent years? There are no additional estimated 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 **501 KAR 6:250E**

A system of graduated sanctions is required to be adopted by January 1, 2012 pursuant to KRS 439.3107. This administrative regulation promulgates part of this system together with Corrections Policy and Procedure 27-15-03, which is incorporated by reference in 501 KAR 6:270. This administrative regulation is authorized to be filed as an emergency administrative regulation pursuant to KRS 13A.190(1)(a)(3). An ordinary administrative regulation alone will not cause the system of graduated sanctions to be adopted by the statutory deadline. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is being filed with the Regulations Compiler simultaneously with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

HON. STEVEN L. BESHEAR, Governor
LADONNA H. THOMPSON, Commissioner

JUSTICE AND PUBLIC SAFETY CABINET **Department of Corrections** **(New Emergency Administrative Regulation)**

501 KAR 6:250E. Graduated sanctions for technical violations of probation and compliance incentives system.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 439.3106, 439.3107, 439.3108, 439.470, 439.551, 439.590, 439.640

EFFECTIVE: December 16, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 439.3106, 439.3107, 439.3108, 439.470, and 439.551 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions and to establish a system of graduated sanctions for probation violations. This administrative regulation establishes graduated sanctions for responding to violations of probation.

Section 1. Definitions. (1) "Conditions of supervision" or "conditions of probation" means general and specific directives given to an offender placed on probation by the sentencing judge or the Division of Probation and Parole.

(2) "Division" means the Kentucky Department of Corrections Division of Probation and Parole.

(3) "Graduated sanctions" is defined in KRS 446.010.

(4) "High risk behavior" means a lifestyle activity that places a person at risk of suffering a particular harmful condition.

(5) "New criminal violation" means conduct constituting a violation of criminal law whether or not it has led to new criminal charge(s) and which occurred after the offender was placed on community supervision.

(6) "Offender" means a person placed under the supervision of the division by a court with jurisdiction over the sentence.

(7) "Officer" or "probation and parole officer" means a person

employed by the division who supervises, counsels, and directs an offender on probation.

(8) "Revocation" means an offender having his probation ended and being incarcerated as a result of a hearing for violations of conditions of supervision.

(9) "Releasing authority" means the court with jurisdiction over the sentence that granted probation.

(10) "Risk and needs assessment" is defined in KRS 446.010(35).

Section 2. Application of Graduated Sanctions. If the sentencing court orders the offender to be subject to graduated sanctions as part of the conditions of his probation, then to the extent that this administration regulation is not in conflict with the orders of the court, graduated sanctions shall be applied as follows:

(1) The officer shall consider the:

(a) Offender's assessed risk and needs level;

(b) Offender's adjustment on supervision;

(c) Severity of the current violation;

(d) Seriousness of the offender's previous criminal record;

(e) Number and severity of any previous supervision violations;

and

(f) Extent to which graduated sanctions were imposed for previous violations.

(2) The officer shall review the circumstances of the offender and the violations at issue to determine if the violation behavior is appropriately responded to with graduated sanctions.

(a) Informal Response. In lieu of graduated sanctions, the officer may resolve the following minor violations through an informal case management strategy:

1. Missing scheduled report day,

2. Traffic offense without arrest,

3. Failure to seek employment,

4. Failure to enroll or maintain school attendance, and

5. Failure to notify officer prior to change of address.

(b) Violations which shall be returned to the releasing authority.

Graduated sanctions shall not be used by the officer and violation documentation shall be submitted to the releasing authority for violation proceedings up to and including revocation for the following violations:

1. Absconding supervision;

2. New felony conviction;

3. New misdemeanor conviction of assault;

4. New misdemeanor conviction of violation of emergency protective or domestic violence order;

5. New misdemeanor conviction for sexual offense;

6. New misdemeanor conviction for driving under the influence;

7. Possession of a firearm;

8. Failure to complete sex offender treatment program;

9. Demonstrated pattern of failure to comply with conditions of supervision; or

10. Violations of an assaultive nature.

(3) If a determination is made by the officer to proceed with graduated sanctions, then the officer shall review the probation and parole violation matrix in Section 5 of this administrative regulation to impose sanctions.

(4) The officer shall identify the seriousness of the violation behavior using the matrix.

(a) If there are multiple violations, the officer shall use the most serious violation for the review for sanctions.

(b) If the possible sanctions in a response range have been exhausted on previous violations, the officer may use sanctions in the next highest response range.

(c) If the offender has violated conditions of supervision imposed in more than one case (i.e., multiple cases from a single jurisdiction, cases from multiple jurisdictions, or on supervision for probation and parole or other form of community supervision), the officer shall determine the criminal conviction in the case for which the graduated sanctions will be imposed. A graduated sanction shall not be imposed on more than one case at a time and cases shall not be sanctioned separately for individual violations arising from the same series of violations.

(5) In order to determine the range of sanctions that may be imposed, the officer shall:

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(a) Determine the offender's risk and needs level based on the offender's most recent risk and needs assessment;

(b) Use the probation and parole violation matrix in Section 5 of this administrative regulation to cross reference the violation behavior category as determined in Section 2(4) with the offender's risk and needs level to determine the sanctions available in the indicated response range.

(6) If the officer determines that the indicated response range or a lower response range contains an appropriate sanction for the circumstances of the violation, then the officer shall impose the sanction.

(7) The officer shall seek approval from the supervisor, if the officer determines that:

(a) More than two sanctions from response range 3 or higher are appropriate for the circumstances of the violation;

(b) The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends imposing sanctions from a higher response range;

(c) The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends revocation; or

(d) Interventions not included in the matrix are appropriate for the circumstances of the violation.

(8) Upon receiving a recommendation for graduated sanctions which requires approval before being implemented,

(a) The district supervisor or designee shall review the recommendation and may:

1. Approve the recommendation; or

2. Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.

(b) The officer shall document the action in the offender management system.

(9) If the officer determines that the offender has failed to comply with graduated sanctions and further implementation of graduated sanctions would be futile, the officer shall seek approval from the district supervisor or designee to submit violation documentation to the releasing authority for violation proceedings.

(10) Upon receiving a recommendation to submit violation documentation to the releasing authority for violation proceedings,

(a) The district supervisor or designee shall review the recommendation and:

1. Approve the recommendation; or

2. Reject the recommendation and refer the violation back to the officer for alternative sanctions.

(b) The officer shall document the action in the offender management system.

Section 3. Minor Violations. Minor violations shall include but are not limited to the following:

(1) Failure to report a citation or arrest;

(2) Failure to report;

(3) Being in an establishment where alcohol is sold as a primary commodity;

(4) Traffic offenses unless arrested;

(5) Failure to pay financial obligations as ordered by the releasing authority;

(6) Failure to seek employment;

(7) Failure to enroll or maintain school attendance;

(8) Falsifying a release report;

(9) Violation of other special conditions unless ordered by releasing authority;

(10) Association with convicted felon;

(11) Violation of travel restrictions;

(12) Visiting a correctional facility without prior approval;

(13) Issuance of an Emergency Protective Order or Domestic Violence Order;

(14) Violation of curfew;

(15) First or second positive drug or alcohol test;

(16) Failure to comply with re-entry programming; and

(17) Other violations of similar magnitude.

Section 4. Major Violations. Major violations shall include but are not limited to the following:

(1) Misdemeanor or felony conviction;

(2) Absconding supervision;

(3) Failure to comply with treatment;

(4) Multiple minor violations within ninety (90) days;

(5) Multiple positive drug or alcohol tests or high risk behavior;

(6) Refusal to submit to an alcohol or drug test;

(7) Intimidating or threatening a probation and parole officer;

(8) Possession or use of a weapon by an offender;

(9) Failure to comply with sex offender registry;

(10) Over three (3) months behind on restitution;

(11) Violation of a special condition ordered by the releasing authority;

(12) Violation of travel restrictions to another state;

(13) Violation of curfew with electronic monitoring device;

(14) Change of residence without officer's permission;

(15) Failure to notify probation and parole officer about address change; and

(16) Other violations of similar magnitude.

Section 5. Probation and Parole Violation Matrix. The following matrix shall be used to determine allowable graduated sanctions for probation violations.

| PROBATION AND PAROLE VIOLATION MATRIX | | | | | |
|---------------------------------------|--|---|------|---|-----|
| OFFENDER RISK LEVEL | | | | | |
| VIOLATION | | Very High | High | Moderate | Low |
| 1st Minor | | 2 | 1 | 1 | 1 |
| 2nd Minor | | 3 | 2 | 2 | 2 |
| 3rd (more) Minor | | 4 | 3 | 3 | 2 |
| 1st Major | | 4 | 3 | 3 | 2 |
| 2nd Major | | 4 | 3 | 3 | |
| 3rd (more) Major | | 4 | 4 | 4 | |
| Response Range 1 | | Response Range 2 | | Response Range 3 | |
| | | Any response or combination of responses in range 1 or: | | Any response or combination of responses in range 1-2 or: | |
| Verbal or Written Warning | | Curfew up to 60 days | | Curfew up to 120 days | |
| Increased Reporting | | Community Service 20-30 hours | | Community Service 30-40 hours | |
| Increase Frequency of Drug Testing | | Electronic Monitoring | | Halfway House | |
| Increase Level of Supervision | | Increased Treatment Up To Residential | | Jail Time up to 30 days (requires hearing with releasing authority) | |
| | | | | Request Revocation | |

| | | | |
|---|--|--|--|
| Loss of Travel or Other Privileges | Discretionary Detention up to 10 days with Supervisor Approval | | |
| Curfew up to 30 days | | | |
| Referral to the Social Service Clinician for substance abuse assessment and treatment | | | |
| Referral to Community Service Agency for Counseling or Treatment | | | |
| Community Service up to 8 hours | | | |
| *Upon consideration of the totality of the circumstances and with supervisory approval, the officer may direct the offender into appropriate interventions not included in the violation matrix or seek to impose a high lever sanction, up to and including revocation. | | | |

Section 6. Documentation and Notice of Graduated Sanctions.

(1) Prior to imposing the graduated sanctions, the officer shall prepare a probation violation report. The report shall include:

- (a) A description of the violation behavior;
- (b) A description of the sanctions which will be imposed; and
- (c) Notice of the offender's right to:
 1. A violation hearing before the court;
 2. Representation by an attorney at the hearing; and
 3. Have an attorney appointed for him at state expense if he cannot afford one.

(2) The officer shall:

- (a) Provide a copy of the probation violation report to the offender prior to the imposition of sanctions;
- (b) Ask the offender if he can read the probation violation report. If the offender states that he cannot read, then the officer shall read the report to the offender.
- (c) Ask the offender if he can understand English. If the offender informs the officer that he cannot understand English, the officer shall provide the offender with a probation violation report in the offender's language or a language interpreter, if available. If the report cannot be provided in the offender's language and a language interpreter is not available, then the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated sanctioning process.

(3) If the offender indicates to the officer that he does not understand his rights as stated in the probation violation report, the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated sanctioning process.

(4) If the offender chooses to waive his right to a violation hearing and elects to participate in the graduated sanctioning process, then:

- (a) The offender shall note his choice and sign the probation violation report;
- (b) The officer shall sign the probation violation report;
- (c) The district supervisor or designee shall sign the probation violation report;
- (d) The officer shall provide the probation violation report to the

releasing authority; and

(e) The officer shall document the actions taken in the offender management system.

(5) If an offender contests the sanctions to be imposed or chooses not to waive his right to a violation hearing, the officer shall report the violation to the releasing authority for proceedings.

Section 7. Discretionary Detention Up to Ten Days. (1) If the officer recommends discretionary detention as a graduated sanction, the officer shall review the offender's record to determine if the recommended days of detention will cause the offender to serve more than thirty days in discretionary detention during the calendar year.

(2) The officer shall determine a period of detention, not to exceed ten days.

(3) The officer shall seek approval from the district supervisor for the detention. If the officer takes the offender into custody, the officer shall:

(a) Obtain approval from the District Supervisor within four (4) hours;

(b) If the detention is not approved, follow directives of the District Supervisor;

(c) Continue the detention if other legal process permits; or

(d) Release the offender from detention.

(4) Upon receiving a recommendation for detention:

(a) The district supervisor shall:

1. Approve the recommendation; or

2. Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.

(b) The officer shall document the action in the offender management system.

(5) The officer shall determine if the offender is employed and whether it is feasible for the offender to serve the approved detention at times that the offender is not scheduled to work.

(6) The officer shall document the violation and provide notice to the offender and the releasing authority pursuant to the provisions of Section 6 of this administrative regulation.

Section 8. Compliance Incentives. An officer may use proportionate incentives for compliance with conditions of supervision, including but not limited to:

(1) Reduced reporting requirements,

(2) Lower levels of supervision as indicated by the offender's risk and needs assessment,

(3) Removal of supervision conditions, for example home detention or curfew,

(4) Eligibility for early termination of probation, or

(5) Other similar incentives.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: December 12, 2011

FILED WITH LRC: December 16, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker (502) 564-3279

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes a system of graduated sanctions for probationers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 439.3106, 439.3107, 439.3108, 439.470, 439.551, 439.553.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation addresses new legislative requirements and establishes a system of graduated sanctions for non-compliance with probation supervision.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets a system of standard responses for probation officers to violations of probation, but still allows flexibility.

(2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 425 employees and 30,000 offenders, and 120 releasing courts.

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

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

The courts will have to determine the extent of the applicability of the sanctions system because the Department cannot act in conflict with the courts' orders in the supervision of probationers. Probation and parole officers will have to review the offender's case for imposition of sanctions for violations and provide notice to the releasing authority in most cases. Offenders who violate their terms of probation will have to determine whether to agree with the imposition of sanctions or alternatively have the court rule on the violations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Alternative sanctions for non-compliant offenders may include short term incarceration at a local detention facility with an average cost of \$31.34 per day. The alternative sanction may be imposed in lieu of re-incarceration at a state prison at the average cost of \$60.02 per day.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Offenders will receive alternative sanctions in the community in an effort to avoid re-incarceration for less serious violations. Offenders will have the system of graduated sanctions clearly stated for a better understanding of the consequences of violations and giving offenders the opportunity to comply prior to revocation of supervision being sought.

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

(a) Initially: There is no cost to implement this administrative regulation.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds.

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

There is no anticipated increase in fees or funding to meet the legislative requirements and this 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? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

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

be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky Department of Corrections and sentencing courts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.3106, 439.3107, 439.3108, 439.470, 439.551, 439.553

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (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? Alternative sanctions may include short term incarceration at the local detention center at an average cost of \$31.34 per day. Local jails receive compensation for the cost of housing state offenders for alternative sentences. Based on an average of 13,788 days per month of offenders spent in jail custody on alternative sentences for the first quarter of FY2012, the monthly revenue to state jails is estimated at \$432,115.92.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is estimated that incarceration costs occurring in subsequent years would be the same as incurred in the first year.

(c) How much will it cost to administer this program for the first year? Based on an average of 13,788 days offenders spent in jail per month on alternative sentences for the first quarter of FY2012, the monthly cost to the state is \$432,115.92 (\$5,185,391.04 annually). The alternative sanction may be imposed in lieu of re-incarceration at a state prison at the average cost of \$60.02 per day, for which the estimated monthly cost would be \$827,555.76 (\$9,930,669.12 annually).

(d) How much will it cost to administer this program for subsequent years? It is estimated that expenses occurring in subsequent years would be the same as incurred in 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 (+/-):
Expenditures (+/-):
Other Explanation:

STATEMENT OF EMERGENCY 501 KAR 6:270E

A system of graduated sanctions is required to be adopted by January 1, 2012 pursuant to KRS 439.3107. Corrections Policy and Procedure 27-15-03, which is incorporated by reference in this administrative regulation, promulgates part of this system together with 501 KAR 6:250. This administrative regulation is authorized to be filed as an emergency administrative regulation pursuant to KRS 13A.190(1)(a)(3). An ordinary administrative regulation alone will not cause the system of graduated sanctions to be adopted by the statutory deadline. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is being filed with the Regulations Compiler simultaneously with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

HON. STEVEN L. BESHEAR, Governor
LADONNA H. THOMPSON, Commissioner

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Emergency Amendment)

501 KAR 6:270E. Probation and parole policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

VOLUME 38, NUMBER 8 – FEBRUARY 1, 2012

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.3104, 439.3105, 439.3107, 439.345, 439.470, 439.551, 439.590, 439.640
EFFECTIVE: December 16, 2011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.3105, 439.3107, 439.345, 439.470, 439.551, 439.590, 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Probation and Parole Policies and Procedures," December 16, 2011~~[September 12, 2008]~~, are incorporated by reference. Probation and Parole Policies and Procedures include:

- 27-06-02 Equal Access to Services (Added 1/12/05)
- 27-07-01 Cooperation with Law Enforcement Agencies (Added 1/12/05)
- 27-08-01 Critical Incident Planning and Reporting and Use of Force~~[and Critical Incident Reporting]~~ (Amended 12/16/11~~[12/9/08]~~)
- 27-09-01 Kentucky Community Resources Directory (Added 1/12/05)
- 27-10-01 Pretrial Diversion (Amended 4/12/05)
- 27-10-02 Mandatory Re-Entry Supervision (Added 12/16/11)
- 27-10-03 Postincarceration Supervision (Added 12/16/11)
- 27-11-01 Citizen Complaints (Amended 2/13/06)
- 27-11-02 Staff-Offender Interaction (Added 9/12/08)
- 27-12-01 Case Classification (Amended 12/16/11~~[12/9/08]~~)~~[27-12-02 Risk Scale Assessment (Amended 4/12/05)]~~
- 27-12-03 Initial Interview and Intake of New Case (Amended 12/16/11)~~[(Added 1/12/05)]~~
- 27-12-04 Conditions of Supervision Document and Request for Modification (Amended 12/16/11)~~[(Added 1/12/05)]~~
- 27-12-05 Releasee's Report Document (Added 1/12/05)
- 27-12-06 Grievance Procedures for Offenders (Amended 12/16/11)~~[(Added 1/12/05)]~~
- 27-12-07 Administrative Caseloads (Added 12/16/11)~~[27-12-08 Supervision Planning (Amended 4/12/05)]~~
- 27-12-11 Guidelines for Monitoring Financial Obligations (Amended 12/16/11~~[4/12/05]~~)
- 27-12-13 Community Service Work (Added 1/12/05)
- 27-12-14 Offender Travel (Amended 12/16/11~~[9/12/08]~~)
- 27-13-01 Drug and Alcohol Testing of Offenders (Amended 12/16/11~~[4/12/05]~~)
- 27-14-01 Interstate Compact (Amended 12/16/11~~[4/12/05]~~)
- 27-15-01 Investigating and Reporting Violations and Unusual Incidents (Amended 12/16/11)~~[Supervision Reporting Documents, Violations and Unusual Incidents (Added 1/12/05)]~~
- 27-15-03 Graduated Sanctions and Discretionary Detention (Added 12/16/11)
- 27-16-01 Search, Seizure, and Processing of Evidence (Amended 12/9/08)
- 27-17-01 Absconder Procedures (Amended 4/12/05)
- 27-18-01 Probation and Parole Issuance of Detainer or Warrant (Amended 4/12/05)
- 27-19-01 Preliminary Revocation Hearing (Amended 12/16/11~~[4/12/05]~~) ~~[27-20-02 Prisoner Intake Notification (Added 1/12/05)]~~
- 27-20-03 Parole Compliance Credit (Amended 12/16/11) ~~[Prisoner Status Change (Added 1/12/05)]~~
- 27-21-01 Apprehension of Probation and Parole Violators (Amended 12/16/11~~[12/9/08]~~)
- 27-23-01 In-state Transfer (Added 1/12/05)
- 27-24-01 Releasing Offender from Active Supervision (Amended 12/16/11)~~[(Added 1/12/05)]~~
- 27-24-02 Reinstatement of Offenders to Active Supervision (Added 1/12/05)
- 27-26-01 Assistance to Former Offenders and Dischargees (Amended 2/13/06)

- 27-30-01 Sex Offender Registration (Amended 12/16/11~~[12/9/08]~~)
- 27-30-02 Sex Offender Supervision (Amended 12/16/11~~[12/9/08]~~)
- 27-32-01 Student Intern Program (Amended 12/14/05)
- 27-32-02 Community Based Volunteer Citizen Involvement (Amended 2/13/06)
- 28-01-01 Probation and Parole Investigation Reports,~~[Introduction, Definitions,]~~ Confidentiality, Timing, and General Comments (Amended 12/16/11~~[4/12/05]~~)
- 28-01-02 Probation and Parole Investigation Documents (Administrative Responsibilities) (Amended 12/16/11)~~[(Added 1/12/05)]~~
- 28-01-03 Presentence, Postsentence, and Other Investigative Reports (Amended 12/16/11)~~[Supplemental and Partial Investigations (Added 1/12/05)]~~
- 28-01-08 Calculation of Custody Time Credit (Amended 12/16/11)~~[Probation and Parole Investigation Reports, Partial Investigation Reports and Submissions Schedule (Amended 4/12/05)]~~
- 28-01-09 Release of Information of Factual Content on Presentence or Postsentence Investigation Documents (Added 1/12/05)
- 28-03-01 Parole Plan Investigation, Half-way Houses and Sponsorship (Amended 12/16/11)~~[Parole Planning, investigation request, halfway houses, Parole Officer to monitor employment search and sponsorship (Amended 4/12/05)]~~
- 28-03-02 Release on Parole (Amended 12/16/11)~~[Expedient Release Parole Planning investigative request (Added 1/12/05)]~~
- 28-04-01 Furlough Verifications (Added 1/12/05)

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

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: December 16, 2011

FILED WITH LRC: December 16, 2011 at 4 p.m.

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker (502) 564-3279

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes policies and procedures relating to supervision of probation and parole offenders.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 196.037, 196.070, 196.075, 439.3101, 439.3104, 439.3105, 439.345, 439.470, 439.480, 439.551, and 439.552.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation updates policy and procedures and adds language to address new legislative requirements in HB 463 of the 2011 legislative session. The regulation establishes policies and procedures relating to supervision of probation and parole offenders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes policies and procedures relating to supervision of probation and parole offenders and provides clear direction and information to probation & parole employees in the supervision of offenders.

(2) If 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 revise policies and procedures for probation and parole, adds language to address legislative re-

quirements in HB 463, and makes revisions to comply with American Correctional Association (ACA) standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 439.3101, 439.3104, 439.3105, 439.345, 439.470, 439.551, and 439.552.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment promulgates regulations required by HB 463. The Department is authorized to implement or amend practices or procedures to ensure the safe and efficient operation of the Division of Probation & Parole.

(d) How the amendment will assist in the effective administration of the statutes: This will assist the Division of Probation & Parole in operating more efficiently by enhancing supervision strategies, providing methodology for identifying offender programming needs, and adopting the most effective programming and intervention practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the 684 Kentucky Department of Corrections Division of Probation and Parole employees, 41,000 offenders, and 120 releasing courts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Probation and parole officers will have to learn new procedures to comply with statutory and regulatory changes. The Department will provide additional training to staff and make changes to the offender management system. Offenders' supervision will be focused on criminogenic needs with targeted interventions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes that were necessitated by the HB 463 together with the amendment to this regulation include \$1.2 million to update the offender management system. It is anticipated that there will be 54 more staff needed to operate under the changes in HB 463 and this administrative regulation, at an approximate cost of \$3.6 million for FY13. This staffing amount includes officers to supervise an increase of 1300-1500 offenders released to mandatory re-entry supervision in 2012.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Offenders will benefit from efficient probation and parole supervision and more streamlined supervision processes. The Division of Probation & Parole will allocate resources to supervision services, interventions, and strategies according to nationally set best practices.

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

(a) Initially: The costs incurred stem initially from the legislative changes and this regulation amendment implements those legislative changes. Initial costs include \$1.2 million to update the offender management system. A staffing increase of 54 more staff has been requested for FY13, at an approximate cost of \$3.6 million. This includes infrastructure and equipment costs as well as \$467,600 for additional costs in leased office space. Additionally, an annual training cost per officer of \$411 will total \$22,000 for these new staff.

(b) On a continuing basis: The Division is requesting an additional 34 staff in FY14 at a cost of \$2.1 million, plus the on-going cost of maintaining the additional staff hired in FY13, estimated at \$3.5 million. Additionally there are training and equipment costs for existing staff, estimated in the amount of \$240,602 for FY14.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds and additional funds will need to be allocated by the legislature to fully implement the requirements of HB 463.

(7) Provide an assessment of whether an 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 costs incurred stem initially from the legislative changes and this regula-

tion amendment implements those legislative changes. Additional funds will need to be allocated by the legislature to fully implement the requirements of HB 463.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation establishes uniformity in the supervision fee paid by Interstate Compact offenders being supervised in Kentucky, in accordance with Interstate Compact requirements. The regulation also sets an amount for drug testing fees for offenders on probation and parole supervision.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky Department of Corrections.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 196.037, 196.070, 196.075, 439.310, 439.3101, 439.3104, 439.3105, 439.345, 439.470, 439.480, 439.551, and 439.552.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (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 releasing authority sets fees for most offenders. This regulation sets supervision fees for Interstate Compact offenders, which is estimated to generate approximately \$201,450 annually. These fees are allocated to the Kentucky general fund. This regulation also sets fees for drug testing required for offenders on supervision. In FY 2011, the Division collected \$1.5 million in drug testing fees. Drug testing fees collected are allocated to Department of Corrections restricted funds.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is anticipated that the amount collected will be similar for subsequent years.

(c) How much will it cost to administer this program for the first year? No new program is created. The costs incurred for the regulation stem initially from the legislative changes and this regulation amendment implements those legislative changes. A staffing increase of 54 more staff has been requested for FY13, at an approximate cost of \$3.6 million. This includes infrastructure and equipment costs as well as \$467,600 for additional costs in leased office space. Additionally, an annual training cost per officer of \$411 will total \$22,000 for these new staff.

(d) How much will it cost to administer this program for subsequent years? The Division is requesting an additional 34 staff in FY14 at a cost of \$2.1 million, plus the on-going cost of maintaining the additional staff hired in FY13, estimated at \$3.5 million. Additionally there are training and equipment costs for existing staff, estimated in the amount of \$240,602 for FY14.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY
921 KAR 2:015E**

This emergency administrative regulation is necessary to change the standards for all levels of care for the State Supplementation Program due to the federal and state agreement to pass through the Supplemental Security Income 2012 cost of living adjustment. This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the U.S. Department of Health and Human Services to pass along any cost of living adjustments in Supplemental Security Income benefits to State Supplementation Program recipients. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration notified the Department for Community Based Services of the 3.6% Supplemental Security Income cost of living adjustment in October 2011. An ordinary administrative regulation would not allow the agency sufficient time to have an administrative regulation in place in order to revise the payment standards effective January 1, 2012. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

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

RELATES TO: KRS 209.020(4), 216.557(1), 216.750(2), 216B.010-216B.131, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

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

EFFECTIVE: December 29, 2011

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

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

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

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

(4) "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.

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

(6) "Qualified alien" means an alien who, at the time the person

applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 1:011[921 KAR 2:006].

(7) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Behavioral Health, Developmental and Intellectual Disabilities[Department for Mental Health, Developmental Disabilities, and Addiction Services] to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

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

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

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

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

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

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

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

(4) A mandatory payment shall discontinue if:

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

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

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

(a) Income as recognized in December 1973 decreases;

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

(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.

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

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 1:011, Sections 1(7), (8), 5(5), (6), (7), (13), 10, and 11;

(b) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(c) 907 KAR 1:645;

(d) 907 KAR 1:650, Section 1(9); and

(e) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

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

(a) Furnish a Social Security number; or

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

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

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

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

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and

(c)1. Resides in a personal care home and is sixteen (16) years of age or older in accordance with 902 KAR 20:036, Section 3(3)(a);

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

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

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

(a) Residence in a personal care home that:

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

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

(b) Residence in a family care home that:

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

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

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

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

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

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation; or

b. Residence; or

2. Death of the state supplementation recipient; and

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

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

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

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

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence; or

2. Death of the state supplementation recipient; and

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

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

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

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

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

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

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

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

(a) A live-in attendant; or

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

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

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

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

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

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

1. The spouse;

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

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

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(9); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

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

(a) \$2000 for individual; or

(b) \$3000 for couple.

Section 7. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(9); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

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

(a) Adding:

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

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

(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

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

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

1. Himself; and

2. Each minor dependent child.

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

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

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

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

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

(9)(a) For a resident in the Elder Shelter Network Program, income and resources of the spouse shall be disregarded for the month of separation.

(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 8. Standard of Need. (1) To the extent funds are available, the standard of need is as follows:

(a) For a resident of a personal care home on or after January 1, ~~2012, \$1,218[2009, \$1,194]~~;

(b) For a resident of a family care home on or after January 1,

2012, \$870[2009, \$846]; or

(c) For individuals who receive caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability on or after January 1, 2012, \$760[2009, \$736];

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care on or after January 1, 2012, \$1,109[2009, \$1,072]; or

3. An eligible couple, both aged, blind or have a disability and both requiring care on or after January 1, 2012, \$1,163[2009, \$1,126].

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

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

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

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

Section 9. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

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

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

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

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

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

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

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

1. Notification of the temporary admission; and

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

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

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

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

Section 10. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified alien.

Section 11. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 12. [Persons with] Mental Illness or Mental Retardation (MI/MR) Supplement Program. (1) A personal care home:

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

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

(c) Shall meet the following certification criteria for eligibility to participate in the MI/MR[Mental Illness or Mental Retardation] Supplement Program:

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

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

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

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

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

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

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

5. Be verified by the Office of Inspector General in accordance with Section 14(2) through (4) of this administrative regulation; and

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

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

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

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

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

(a) Receipt of verification from the Office of Inspector General as specified in Section 14(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

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

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

2. Lists the resident's Social Security number; and

3. Annotates the form, in order to maintain confidentiality, as follows with a:

a. Star indicating a resident has a mental illness or mental retardation diagnosis;

b. Check mark indicating a resident receives state supplementation; and

c. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and

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

1. Mail;

2. Fax; or

3. Electronically.

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

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

(b) Payment; and

(c) Audit purposes.

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

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

Section 13. Mental Illness or Mental Retardation Basic Training. (1)(a) To the extent cabinet funds are available to support the training, a personal care home's licensed nurse, or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities~~[Department for Mental Health, Developmental Disabilities, and Addiction Services]~~.

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

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

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

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

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation;

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation; and

(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall:

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

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

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

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

1. Has successfully completed certified medication technician training; and

2.a. Has received mental illness or mental retardation basic training; or

b. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities~~[The Department for Mental Health, Developmental Disabilities, and Addiction Services]~~ may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through a one (1) day workshop.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.

(d) Attendance of an advanced level training workshop shall be optional.

(6) The Department for Behavioral Health, Developmental and Intellectual Disabilities~~[The Department for Mental Health, Developmental Disabilities, and Addiction Services]~~ shall provide within five (5) working days a:

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

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

(7) Unless staff turnover occurs as specified in subsection (4)(a) of this section, the department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the MI/MR~~[Persons with Mental Illness or Mental Retardation]~~ Supplement Program; and

(b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 14. MI/MR~~[Persons with Mental Illness or Mental Retardation]~~ Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/MR~~[Persons with Mental Illness or Mental Retardation]~~ Supplement Program.

(a) The personal care home's initial MI/MR~~[Persons with Mental Illness or Mental Retardation]~~ Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and

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

(b) After a personal care home's initial MI/MR~~[Persons with Mental Illness or Mental Retardation]~~ Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2 of this subsection.

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

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

(a) Observe and interview residents and staff; and

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

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (4) of this administrative regulation;

2. The personal care home:

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

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

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

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

b. Is on duty as specified in Section 12(1)(c)3 of this administrative regulation; and

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

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

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

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/MR~~[Persons with Mental Illness or Mental Retardation]~~ Supplement Program Certification Survey process.

(4) If thirty-five (35) percent of the population is mental illness or mental retardation clients, as specified in Section 12(1)(c)2 of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(6)(a) of this administrative regulation.

(6) The Office of Inspector General shall provide the depart-

ment with a completed STS-4, Mental Illness or Mental Retardation (MI/MR) Supplement Certification Survey within fifteen (15) working days of an:

- (a) Initial survey; or
- (b) Inspection in accordance with KRS 216.530.

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

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

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

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

- (a) Relevant to unmet certification criteria specified on the STS-4; and
- (b) Within ten (10) working days after the STS-2 is issued[mailed].

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

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

Section 15. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

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

- (a) "STS-1, Mental Illness or Mental Retardation (MI/MR) Supplement Program Application for Benefits", edition 1/09;
- (b) "STS-2, Mental Illness or Mental retardation (MI/MR) Supplement Program Notice of Decision to Personal Care Home", edition 1/09;
- (c) "STS-3, Mental Illness or Mental Retardation (MI/MR) Supplement Program Monthly Report Form", edition 1/09; and
- (d) "STS-4, Mental Illness or Mental Retardation (MI/MR) Supplement Certification Survey", edition 1/12[4/09].

(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.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 14, 2011

FILED WITH LRC: December 29, 2011 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons requiring care in a personal care or family care home or receiving caretaker services in accordance with KRS 205.245.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the Mental Illness or Mental Retardation (MI/MR) Supplement Program.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program for persons who are aged, blind or have a disability and its compliance with an agreement with the Department of Health and Human Services to pass along the Supplemental Security Income cost of living adjustment to State Supplementation recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the eligibility requirements and standards of need for the State Supplementation Program for persons who are aged, blind or have a disability.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulations by increasing the standards of need for all levels of care in the State Supplementation Program for persons who are aged, blind or have a disability. The increase reflects the cost of living adjustment to be implemented in calendar year 2012 by the Social Security Administration for Supplemental Security Income (SSI) recipients. The amendment also makes technical corrections.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the agreement between the Commonwealth of Kentucky and the U.S. Department of Health and Human Services to pass along the cost of living adjustment in Supplemental Security Income benefits to State Supplementation Program recipients. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration notified the Department for Community Based Services of the amount of the Supplemental Security Income cost of living adjustment in October 2011. Technical corrections were necessitated to promote clarity and reflect organizational changes and other recent regulatory amendments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to authorizing statutes by complying with an agreement between Kentucky and the U.S. Department of Health and Human Services to pass along the cost of living adjustment for Supplemental Security Income to State Supplementation Program through an increase in the program's standard of need for all recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by passing along the 2012 3.6% cost of living adjustment for the Supplemental Security Income benefit by modifying the standard of need for all levels of care for the State Supplementation Program and making other technical corrections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of October of 2011, there were 3,922 recipients receiving State Supplementation Program 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: The payment to a resident of a Personal Care Home is \$1,218 minus the personal care allowance of \$60 for the recipient. The payment to a resident of a Family Care Home is \$870 minus the personal care allowance of \$40 for the recipient. The payment to a caretaker of a single person is \$760. The payment to a caretaker of a couple, one requiring care, is \$1,109. The payment to a caretaker of a couple, both requiring care, is \$1,163. In all instances the State Supplementation payment made is the difference between the applicable standard of need and the countable income of the recipient.

(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 identified in question (3) or their care providers.

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

entities identified in question (3): The recipients of the State Supplementation payment will receive the 3.6% cost of living adjustment implemented by the Social Security Administration.

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

(a) Initially: Although Kentucky will pass along the 3.6% federal cost of living adjustment by increasing the State Supplementation Program's standards of need, there will be no fiscal impact for the Cabinet for Health and Family Services to implement the mandated pass along of the 2012 SSI cost of living adjustment. Rather, recipients of the State Supplementation Program benefit will realize the federal SSI increase.

(b) On a continuing basis: Although Kentucky will pass along the 3.6% federal cost of living adjustment by increasing the State Supplementation Program's standards of need, there will be no fiscal impact for the Cabinet for Health and Family Services to implement the mandated pass along of the 2012 SSI cost of living adjustment. Rather, recipients of the State Supplementation Program benefit will realize the federal SSI increase.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds/Agency Funds are used to fund the State Supplementation Program's benefits.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not establish any fees. No increase in fees or funding is necessary to implement this administrative regulation.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1382 e-g
2. State compliance standards. KRS 194A.050 (1), 205.245
3. Minimum or uniform standards contained in the federal mandate. No.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None imposed

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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 Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 (1), 205.245, 42 U.S.C. 1382e-g

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 in the first year.

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

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, January 9, 2012)

13 KAR 2:110. Advanced practice doctoral degree programs at comprehensive universities.

RELATES TO: KRS 164.001, 164.020(15), 164.295(3)

STATUTORY AUTHORITY: KRS 164.295(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.295(4) requires the Council on Postsecondary Education, in consultation with the Advisory Conference of Presidents pursuant to KRS 164.021, to promulgate an administrative regulation to establish the criteria and conditions upon which an advanced practice doctoral degree program may be approved for a comprehensive university. This administrative regulation establishes the criteria and conditions for the approval of an advanced practice doctoral degree program.

Section 1. Definitions. (1) "Advanced practice doctorate" means a program of study beyond the master's degree designed to meet the workforce and applied research needs of a profession.

(2) "Board" or "governing board" is defined by KRS 164.001(4).

(3) "College" means an administrative unit within a state university, which consists of related academic disciplines, that offers academic programs but does not have the authority to grant a degree.

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

(5) "Council" is defined by KRS 164.001(8).

(6) "Learning outcomes" is defined by KRS 164.001(25).

(7) "Postsecondary education system" is defined by KRS 164.001(17).

(8) "Public" is defined by KRS 164.001(19).

(9) ~~["Specialization" means a set of courses designed to develop expertise within a major at the doctoral level.~~

(10) "Southern Association of Colleges and Schools Commission on Colleges" means the regional body for the accreditation of degree-granting higher education institutions in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia and Latin America and other international sites.

(10) "Specialization" means a set of courses designed to develop expertise within a major at the doctoral level.

(11) "Strategic agenda" is defined by KRS 164.001(23).

Section 2. General Requirements. (1) In submitting the "Pre-Proposal for a New Academic Program" required by Section 3(1) **of this administrative regulation** and the "Proposal for a New Doctoral Program" required by Section 3(5) **of this administrative regulation**, a comprehensive university shall demonstrate that an advanced practice doctorate adheres to the role and scope of the institution as set forth in its mission statement and as complemented by the institution's academic plan by:

(a) Listing the objectives of the advanced practice doctorate;

(b) Explaining how the advanced practice doctorate relates to the institutional mission and strategic plan;

(c) Explaining how the advanced practice doctorate addresses the state's postsecondary education strategic agenda; and

(d) Explaining how the advanced practice doctorate furthers the statewide implementation plan for the strategic agenda.

(2) In submitting the "Pre-Proposal for a New Academic Program" required by Section 3(1) **of this administrative regulation** and the "Proposal for a New Doctoral Program" required by Section 3(5) **of this administrative regulation**, a comprehensive university shall demonstrate program quality and commitment to student success by:

(a) Listing all learning outcomes;

(b) Explaining how the curriculum achieves the objectives of the advanced practice doctorate by describing the relationship

between the overall curriculum or the major curricular components and the objectives;

(c) Highlighting any distinctive qualities of the advanced practice doctorate;

(d) Noting whether the advanced practice doctorate will replace any specializations within another doctorate program;

(e) Including the projected ratio of faculty to students;

(f) Explaining if the comprehensive university will seek specialized accreditation if accreditation exists for the advanced practice doctorate;

(g) Demonstrating that faculty possesses terminal degrees, master's degrees with professional experience in the field of study, and research experience;

(h) Demonstrating that library resources meet standards for study at the doctoral level and in a particular field of study if standards are available from the Southern Association of Colleges and Schools Commission on Colleges or a specialized accrediting agency for a specific field of study;

(i) Demonstrating availability of classroom, laboratory, office space, and specialized equipment;

(j) Explaining the admission and retention standards;

(k) Stating the degree completion requirements;

(l) Describing how the advanced practice doctorate articulates with related programs at other comprehensive universities and at the University of Kentucky and the University of Louisville;

(m) Providing course descriptions for all courses that will be offered as part of the advanced practice doctorate;

(n) Describing alternative methods of program delivery involving use of technology, distance education, or accelerated degree designs;

(o) Describing how the advanced practice doctorate builds upon the reputation and resources of the comprehensive university's existing master's degree program in the field of study;

(p) Explaining the impact of the advanced practice doctorate on undergraduate education at the comprehensive university; and

(q) Discussing the nature and appropriateness of available clinical sites if there is a clinical component to the advanced practice doctorate.

(3) In submitting the "Pre-Proposal for a New Academic Program" required by Section 3(1) **of this administrative regulation** and the "Proposal for a New Doctoral Program" required by Section 3(5) **of this administrative regulation**, a comprehensive university shall demonstrate demand for the advanced practice doctorate and lack of unnecessary duplication by:

(a) Providing evidence of student demand at the regional, state, and national levels;

(b) Identifying the potential pool of students and how potential students will be contacted;

(c) Describing the student recruitment and selection process;

(d) Identifying the undergraduate and master's level programs as well as employers from which students will be identified;

(e) Providing any evidence of a projected net increase in total student enrollments to the campus as a result of the advanced practice doctorate;

(f) Estimating student enrollment, doctoral candidacies, and degrees conferred for the first five (5) years of the program;

(g) Describing the types of jobs available for graduates, average wages for these jobs, and the number of anticipated openings for each type of job at the regional, state, and national levels;

(h) Justifying the advanced practice doctorate based on changes in the field of study or other academic reasons;

(i) Explaining new practice or licensure requirements in the profession and new requirements by specialized accrediting agencies;

(j) Identifying similar advanced practice doctoral programs in the member states of the Southern Regional Education Board; and

(k) Comparing the program to similar programs within Kentucky in terms of curriculum or areas of specialization, student populations, access to similar programs, demand for similar pro-

grams, and potential for collaboration between the proposed program and similar programs.

(4) In submitting the "Pre-Proposal for a New Academic Program" required by Section 3(1) of this administrative regulation and the "Proposal for a New Doctoral Program" required by Section 3(5) of this administrative regulation, a comprehensive university shall demonstrate costs and funding sources for the advanced practice doctorate by:

- (a) Identifying any necessary additional resources;
- (b) Explaining the financial impact on existing programs and organizational units within the comprehensive university;
- (c) Demonstrating sufficient return on investment to Kentucky to offset new costs;
- (d) Providing assurance that funding for the program will not impair funding of any existing program at any other comprehensive institution;
- (e) Estimating funding available from state, federal, other non-state, tuition, and institutional allocations and reallocations; and
- (f) Estimating costs associated with faculty, student employees, graduate assistants, and professional staff; equipment and instructional materials; library materials; contractual services; academic and student support services; other support services; faculty professional development; student space and equipment; faculty space and equipment; and miscellaneous expenses.

(5) In submitting the "Pre-Proposal for a New Academic Program" required by Section 3(1) of this administrative regulation and the "Proposal for a New Doctoral Program" required by Section 3(5) of this administrative regulation, a comprehensive university shall demonstrate program evaluation procedures by:

- (a) Identifying what program components will be evaluated;
- (b) Explaining when and how the components will be evaluated;
- (c) Identifying who is responsible for the data collection;
- (d) Explaining how the data will be shared with faculty;
- (e) Explaining how the data will be used for program improvement;
- (f) Identifying measures of teaching effectiveness; and
- (g) Identifying plans to assess students' post-graduation success.

Section 3. New Advanced Practice Program Application Procedures. (1) A comprehensive university shall submit the "Pre-Proposal for a New Academic Program" to the online Kentucky Postsecondary Program Proposal System (KPPPS) after the pre-proposal has been approved by the appropriate college within the comprehensive university.

(2) After this information is posted to KPPPS, the chief academic officers, or their designees, of the postsecondary education system and Council staff shall have forty-five (45) days to review and comment on the proposed program. The forty-five (45) day time period shall begin on the date that the pre-proposal is submitted.

(3) If another institution or the Council staff expresses concerns about the proposed program, the Council staff may require additional information and may request review by the chief academic officers of the postsecondary education system. If additional information is requested, the proposing institution shall submit that information within thirty (30) days of the request.

(4) Once all concerns have been addressed, the Council staff shall notify the comprehensive university that:

- (a) The advanced practice doctoral degree program proposed for that comprehensive university[
(a)] has been pre-approved; and
- (b) The comprehensive university may continue the process for developing the program.

(5) The comprehensive university shall submit a "Proposal for a New Doctoral Program", which has been approved by the institutional governing board, to the Council within eighteen (18) months of the Council staff's pre-approval.

(6) Upon receipt of the "Proposal for a New Doctoral Program," Council staff shall review the proposal. If Council staff determines that the comprehensive university has met all the requirements established in Section 2 of this administrative regulation, [per section 2 above, then] staff shall recommend the proposal to the Council for approval.

(7) Upon staff recommendation, [the Council] at its first subsequent meeting after completion of the proposal process, the Council shall either:

- (a) Approve the proposal; or
- (b) Deny the proposal and identify deficiencies in the proposal which shall be corrected by the comprehensive university by submitting a revised proposal to Council staff within ninety (90) working days.

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

- (a) "Kentucky Postsecondary Program Proposal System", November 2011;
 - (b) "Pre-Proposal for a New Academic Program", November 2011; and
 - (c) "Proposal for a New Doctoral Program", November 2011.
- (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.

PAUL PATTON, Chair

APPROVED BY AGENCY: November 14, 2011

FILED WITH LRC: November 15, 2011 at 10 a.m.

CONTACT PERSON: Dr. Melissa Bell, Senior Associate, Academic Affairs, Council on Postsecondary Education, 1024 Capital, Center Dr., Suite 320, Frankfort, Kentucky, 40601, phone (502)573-1555 ext. 357, fax (502)573-1535, email melis-sa.bell@ky.gov.

KENTUCKY STATE BOARD OF ELECTIONS (As Amended at ARRS, January 9, 2012)

31 KAR 3:020. Designated disability service agencies.

RELATES TO: KRS 116.048, 42 U.S.C. 1973gg-5

STATUTORY AUTHORITY: KRS 117.015(1)(a), [KRS] 116.048(1)(d), 42 U.S.C. 1973gg-5(a)(2)(B)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 116.048(1)(d) and 42 U.S.C. 1973gg-5(a)(2)(B) require the Secretary of State to designate as voter registration agencies those agencies that the Secretary determines to be state-funded programs primarily engaged in providing services to persons with disabilities. This administrative regulation sets forth disability service agencies designated to provide voter registration services.

Section 1. Definitions. (1) "Designated agency" means a department, division, or office of state government, or a program supported by state funds which is designated by the Secretary of State through this administrative regulation to provide voter registration services according to KRS 116.048(1)(d).

(2) "Disability Service Agency" means a designated agency that provides state-funded programs primarily engaged in providing services to persons with disabilities.

Section 2. Disability Service Agencies. The following [are] disability service agencies [which] shall provide voter registration services to applicants for the following programs[services through]:

(1) Programs offered by the Office of Vocational Rehabilitation and Office for the Blind within the Education and Workforce Development Cabinet;

(2) Programs offered by the Commission for Children with Special Health Care Needs within the Cabinet for Health and Family Services;

(3) Programs offered by the Department for Aging and Independent Living within the Cabinet for Health and Family Services;

(4) Programs offered by the Department of Behavioral Health, Developmental and Intellectual Disabilities within the Cabinet for

Health and Family Services; and

(5) Programs offered by the HIV/AIDS Branch of the Division of Epidemiology and Health Planning of the Department for Public Health within the Cabinet for Health and Family Services.

HON. ELAINE WALKER, Chair

APPROVED BY AGENCY: October 18, 2011

FILED WITH LRC: October 31, 2011 at 1 p.m.

CONTACT PERSON: Maryellen B. Allen, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502)573-7100, fax (502) 573-4369.

**GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, January 9, 2012)**

201 KAR 20:085. Licensure periods and miscellaneous requirements.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS 314.071, 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.071

requires the board to establish licensure periods for licenses issued by the board. This administrative regulation establishes the licensure periods. It also establishes[provides for] miscellaneous requirements.

Section 1. (1) A nursing license or credential issued during the first seven (7) months of a licensure period shall expire at the end (October 31) of the current licensure period.

(2) A nursing license or credential[(b)] issued during the last five (5) months of a licensure period shall expire at the end (October 31) of the succeeding licensure period.

Section 2. Licensure Periods. (1) The licensure period for all licenses and credentials, except for provisional, inactive, and retired status licenses, shall be for one (1) year beginning on November 1.

Section 3. For the purposes of the practice of nursing, a nurse shall use the name under which he or she is licensed with the board of nursing.

CAROL KOMARA, President

APPROVED BY AGENCY: October 14, 2011.

FILED WITH LRC: November 8, 2011 at noon

CONTACT PERSON: Nathan Goldman, General Counsel Kentucky Board of Nursing 312 Whittington Parkway, Suite 300 Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov

**GENERAL GOVERNMENT CABINET
Board Of Nursing
(As Amended at ARRS, January 9, 2012)**

201 KAR 20:260. Organization and administration standards for prelicensure programs of nursing.

RELATES TO: KRS 314.041(1)

STATUTORY AUTHORITY: KRS 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(1) and 314.131(2) require the board to approve schools of nursing and courses preparing persons for licensure and to monitor standards for nurse competency under KRS Chapter 314. This administrative regulation establishes the organization and administration standards for prelicensure registered nurse or practical nurse programs.

Section 1. Definitions[Definition]. (1) "NCLEX" means the National Council Licensure Examination.

(2) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical

nurse and includes secondary or distance learning sites, if applicable.

Section 2. Organization or Administration Standards for Prelicensure Registered Nurse and Practical Nurse Programs. To be eligible for approval by the board, a program shall have:

(1) A governing institution.

(a) The governing institution that establishes and conducts the program of nursing shall hold accreditation as a postsecondary institution, college, or university by an accrediting body recognized by the U.S. Department of Education.

(b) The governing institution shall assume full legal responsibility for the overall conduct of the program of nursing. The program of nursing shall have comparable status with the other programs in the governing institution and the relationship shall be clearly delineated.

(c) The governing institution shall:

1. Designate a program administrator for the prelicensure program who is qualified pursuant to 201 KAR 20:310;

2. ~~[Effective July 1, 2010,]~~ Assure that at least fifty (50) percent of the program administrator's time shall be dedicated to complete the duties specified in this administrative regulation at each program of nursing, up to 100 percent.

a. A governing institution that is unable to comply with this standard may request an exemption from the board in writing.

(i) The request shall state the reasons for noncompliance and the efforts the institution has taken and will take to comply with the standard.

(ii) If the exemption is granted, it shall be for one (1) academic year. During this time, the governing institution shall not open a new program of nursing and shall not increase enrollment at an existing program of nursing.

b. The program administrator's time to be dedicated to completion of the duties specified in this administrative regulation shall not be less than twenty five (25) percent for each program of nursing;

3. Establish administrative policies;

4. Provide evidence that the fiscal, human, physical, clinical, and technical learning resources shall be adequate to support program mission, processes, security, and outcomes;

5. Provide student support programs, services, and activities consistent with the mission of the governing institution that promote student learning and enhance the development of the student;

6. Make financial resources available to the program of nursing consistent with equivalent programs at the governing institution;

7. Employ nurse faculty pursuant to 201 KAR 20:310 in sufficient number and expertise to accomplish program outcomes and quality improvement;

8. Provide written policies for faculty related to qualifications for the position, rights and responsibilities of the position, criteria for evaluation of performance, workload, promotion, retention, and tenure;

9. Involve the nurse faculty in determining academic policies and practices for the program of nursing; and

10. Provide for the security, confidentiality, and integrity of faculty employment records.

(d) The governing institution shall provide an organizational chart that describes the organization of the program of nursing and its relationship to the governing institution;

(2) Administrative policies.

(a) There shall be written administrative policies for the program of nursing that shall be:

1. In accord with those of the governing institution; and

2. Available to the board for review.

(b) The board shall be notified in writing of a vacancy or pending vacancy in the position of the program administrator within fifteen (15) days of the program of nursing's awareness of the vacancy or pending vacancy. If the program administrator vacates the position, the head of the governing institution shall submit to the board in writing:

1. The effective date of the vacancy;

2. The name of the registered nurse who has been designated to assume the administrative duties for the program and a copy of his or her curriculum vitae;

3.a. If there is to be a lapse between the date of the vacancy

and the date the newly-appointed program administrator assumes duties, the head of the governing institution shall submit a plan of transition to insure the continuity of the program.

b. Progress reports shall be submitted if requested by the board;

4.a. The length of the appointment of an interim program administrator shall not exceed six (6) months.

b. Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position; and

5.a. If the individual to be appointed as the interim program administrator is not qualified pursuant to 201 KAR 20:310, the head of the governing institution shall petition the board for a waiver prior to the appointment.

b. A waiver shall be granted if the individual to be appointed meets at least the minimum requirements established in 201 KAR 20:310 for nurse ~~faculty~~[facility].

(c) A written plan for the orientation of the nurse faculty to the governing institution and to the program shall be implemented.

(d) There shall be a written contract between the governing institution and each agency or institution that provides a learning experience for a student. A contract shall not be required for an observational experience.

1. The contract shall clearly identify the responsibilities and privileges of both parties.

2. The contract shall bear the signature of the administrative authorities of each organization.

3. The contract shall vest in the nurse faculty control of the student learning experiences subject to policies of the contractual parties.

4. The contract shall be current and may include an annual automatic renewal clause.

5. The contract shall contain a termination clause by either party;

(3) A program or an interim program administrator who shall have authority and responsibility in the following areas:

(a) Development and maintenance of collaborative relationships with the administration of the institution, other divisions or departments within the institution, related facilities, and the community;

(b) Participation in the preparation and management of the program of nursing budget;

(c) Screening and recommendation of candidates for nurse faculty appointment, retention, and promotion;

(d) Within thirty (30) days of appointment to, submit the qualifications of all nurse faculty and clinical instructors;

(e) To provide leadership within the nurse faculty for the development, implementation, and evaluation of the program of nursing and program outcomes;

(f) To facilitate ~~and~~ the implementation of written program policies for the following:

1. Student admission;

2. Student readmission and advance standing;

3. Student progression, which shall include:

a. The level of achievement a student shall maintain in order to remain in the program or to progress from one (1) level to another; and

b. Requirements for satisfactory completion of each course in the nursing curriculum.

4. Requirements for completion of the program;

5. Delineation of responsibility for student safety in health related incidents both on and off campus;

6. Availability of student guidance and counseling services;

7. The process for the filing of grievances and appeals by students;

8. Periodic evaluation by the nurse faculty of each nursing student's progress in each course and in the program;

9. Student conduct that incorporate the standards of safe nursing care; and

10. Publication and access to current academic calendars and class schedules;

(g) To facilitate the continuing academic and professional development for the nurse faculty;

(h)1. To coordinate the development and negotiation of con-

tracts with clinical facilities~~[- Coordinates the development and negotiation of contracts with clinical facilities]~~, the number and variety of which shall be adequate to meet curricular outcomes; and

2. To coordinate the development of selection and evaluation criteria for clinical facilities and ensure that the criteria ~~will~~[shall] be utilized by the program of nursing;

(i) The establishment of student-nurse faculty ratio in the clinical practice experience.

1. The maximum ratio of nurse faculty to students in the clinical area of patients-clients shall be defensible in light of safety, learning objectives, student level, and patient acuity.

2. The student-nurse faculty ratio shall not exceed ten (10) to one (1) in the clinical practice experience, including observational or preceptored experiences. Observational experiences shall include an assignment ~~where a student observes nursing and~~ ~~where the student does~~[for which a student shall observe nursing and shall] not participate in direct patient or client contact but ~~has~~[shall have] access to a clinical instructor as needed.

3. This ratio shall not apply to on campus skill lab experiences;

(j) The submission of the Certified List of Kentucky ~~Program of~~ Nursing Graduates, as incorporated by reference in 201 KAR 20:070, upon student completion of all requirements for a degree, diploma or certificate;

(k) The development and maintenance of an environment conducive to the teaching and learning process;

(l) To facilitate the development of long-range goals and objectives for the nursing program;

(m) To ensure that equipment, furnishings, and supplies ~~are~~[shall be] current and replaced in a timely manner;

(n) To ensure that the nurse faculty ~~has~~[shall have] sufficient time to accomplish those activities related to the teaching-learning process;

(o) To coordinate of an orientation to the roles and responsibilities of full-time, adjunct nurse faculty, and clinical instructors to the program of nursing and, as appropriate, to clinical facilities so that the mission, goals, and expected outcomes of the program ~~are~~[shall be] achieved;

(p) To facilitate regular communication with the full and part time nurse faculty and clinical instructors in the planning, implementation, and evaluation of the program of nursing;

(q) To ensure that recruitment materials [shall] provide accurate and complete information to prospective students about the program including the:

1. Nature of the program, including course sequence, prerequisites, corequisites, and academic standards;

2. Length of the program;

3. Current cost of the program; and

4. Transferability of credits to other public and private institutions in Kentucky;

(r) To conduct or participate in the written evaluation of each nurse faculty member, clinical instructor, and support staff according to published criteria, regardless of contractual or tenured status;

(s) To ensure the adherence to the written criteria for the selection and evaluation of clinical facilities utilized by the program of nursing;

(t) To maintain current knowledge of requirements pertaining to the program of nursing and licensure as established in 201 KAR Chapter 20;

(u) To attend a Board of Nursing Program Administrators Orientation within one (1) year of appointment;

(v) To develop a structure to allow nurse faculty to assist in the governance of the program; and

(w) To ensure that the curriculum ~~is~~[shall be] implemented as submitted to the board;

(4) A system of official records and reports essential to the operation of the program of nursing maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system shall include records of:

(a) Currently enrolled students to include admission materials, courses taken, grades received, scores for standardized tests, and clinical performance records;

(b) Minutes of faculty and committee meetings. These records shall be maintained a minimum of five (5) years, irrespective of institutional policy;

(c) Faculty records including:

1. Validation of current licensure or privilege to practice as a Registered Nurse in Kentucky;

2. Evidence of fulfilling the faculty orientation requirements established in 201 KAR 20:310, Section 3(5) ~~orientation to the governing institution and the program of nursing~~; and

3. Performance evaluation for faculty employed more than one (1) year;

(d) Systematic plan of evaluation;

(e) Graduates of the program of nursing; and

(f) Administrative records and reports from accrediting agencies; and

(5) Official publications including:

(a) A description of the governing institution and program of nursing;

(b) Policies on admission, progression, dismissal, graduation, and student grievance procedures;

(c) A description of student services;

(6) Clerical assistance.

1. The number of clerical assistants shall be determined by the number of students and faculty.

2. There shall be secretarial and clerical assistants sufficient to meet the needs of the nursing program for the administrator, faculty, and students at the designated primary location, as well as clerical support for secondary and distance learning sites, if applicable. (7) Nurse faculty, full-time, and part-time, with the authority and responsibility to:

(a) Plan, implement, evaluate, and update the program;

(b) Assist in the design, implementation, evaluation, and updating of the curriculum using a written plan;

(c) Participate in the development, implementation, evaluation, and updating of policies for student admission, progression, and graduation in keeping with the policies of the governing institution;

(d) Participate in academic advisement and guidance of students;

(e) Provide theoretical instruction and clinical learning experiences;

(f) Evaluate student achievement of curricular outcomes related to nursing knowledge and practice;

(g) Develop and implement student evaluation methods and tools to measure the progression of the student's cognitive, affective, and psychomotor achievement in course and clinical outcomes based on published rubrics and sound rationale;

(h) Participate in academic and professional level activities that maintain the faculty member's competency and professional expertise in the area of teaching responsibility;

(i) Establish clinical outcomes within the framework of the course;

(j) Communicate clinical outcomes to the student, clinical instructor, preceptor, and staff at the clinical site;

(k) Assume responsibility for utilizing the criteria in the selection of clinical sites and in the evaluation of clinical experiences on a regular basis; and

(l) Evaluate the student's experience, achievement, and progress in relation to course or outcomes, with input from the clinical instructor and preceptor, if applicable; and

(8) Clinical instructors with governance to:

(a) Design, at the direction of the nurse faculty member, the student's clinical experience to achieve the stated outcomes of the nursing course in which the student is enrolled;

(b) Clarify with the nurse faculty member:

1. The role of the preceptor;

2. The course responsibilities;

3. The course or clinical outcomes;

4. A course evaluation tool; and

5. Situations in which collaboration and consultation are needed; and

(c) Participate in the evaluation of the student's performance by providing information to the nurse faculty member and the student regarding the student's achievement of established outcomes.

Section 3. Notification of Increased Enrollment. (1) A program of nursing shall notify the board of an increase in enrollment by ~~more than~~ twenty (20) percent or more of the last cohort enrolled or ten (10) [thirty (30)] students, whichever is greater.

(a) The notification shall be sent in writing not later than six (6) months [one (1) full term] prior to the increase.

(b) The notification shall demonstrate that the program has sufficient resources to fulfill the standards established by this administrative regulation for the anticipated increase in enrollment.

(2) The board shall conduct a site visit to determine if the program has sufficient resources.

(3) The board shall not grant approval for the increase in enrollment unless the program has:

(a) Full approval status; [] and

(b) Program NCLEX pass rate for first time test takers for the preceding year of a minimum of eighty-five (85) percent.

CAROL KOMARA, President

APPROVED BY AGENCY: October 14, 2011

FILED WITH LRC: November 8, 2011 at noon

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email: nathan.goldman@ky.gov

**GENERAL GOVERNMENT CABINET
Board Of Nursing
(As Amended at ARRS, January 9, 2012)**

201 KAR 20:340. Students in prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.041(1), 314.051(1), **314.111**, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 authorizes the board to regulate nursing education programs. This administrative regulation establishes the standards to be met by students in those programs.

Section 1. Students in Programs of Nursing. (1) The number of students admitted to the program of nursing shall be determined by the number of qualified faculty, adequate educational facilities, resources, and appropriate number of clinical learning experiences for students.

(2) Admission requirements and practices shall be stated and published in the governing institution's publications and shall include an assessment of achievement potential through the use of previous academic records and, if applicable, the use of preadmission examination scores consistent with curriculum demands and scholastic expectations.

(3) Program information communicated by the program of nursing shall be accurate, complete, consistent, and publicly available.

(4) Participation shall be made available for students in the development, implementation, and evaluation of the program.

(5) Programs of nursing shall post the Board of Nursing approval status:

(a) In a physical location that is able to be seen and accessible to students, faculty, staff, and the general public; and

(b) On the program's web site.

Section 2. Student Policies. (1) Student policies of the program of nursing shall be congruent with those of the governing institution. Any difference shall be justified by the program of nursing.

(2) Program of nursing student policies, recruitment, and advertising shall be accurate, clear, and consistently applied.

(3) Upon admission to the program of nursing, each student shall be advised in electronic or written format of policies pertaining to:

(a) Approval status of the program as granted by the board;

(b) Policies on admission, transfer or readmission, advanced or transfer placement, withdrawal, progression, suspension, or dis-

missal;

- (c) Evaluation methods to include the grading system;
 - (d) Fees and expenses associated with the program of nursing and refund policies;
 - (e) Availability of counseling resources;
 - (f) Health requirements and other standards as required for the protection of student health;
 - (g) Grievance procedures;
 - (h) Program of study or curriculum plan;
 - (i) Financial aid information;
 - (j) Student responsibilities;
 - (k) Student opportunities to participate in program governance and evaluation; and
 - (l) Information on meeting eligibility for licensure.
- (4) A plan for emergency care during class or clinical time shall be in writing and available to faculty and students.

CAROL KOMARA, President

APPROVED BY AGENCY: October 14, 2011

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CONTACT PERSON: Nathan Goldman, General Counsel,
Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,
Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email: nathan.goldman@ky.gov

**GENERAL GOVERNMENT CABINET
Board Of Nursing
(As Amended at ARRS, January 9, 2012)**

201 KAR 20:410. Expungement of records.

RELATES TO: KRS 314.131

STATUTORY AUTHORITY: KRS 314.131(1), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) and (9) authorize the Board of Nursing to promulgate administrative regulations to establish which disciplinary records may be expunged. This administrative regulation establishes which records may be expunged and the procedure for expungement.

Section 1. Definition. "Expungement" means that all affected records shall be sealed and that the proceedings to which they refer shall be deemed never to have occurred.

Section 2. A nurse whose record has been expunged may properly reply that disciplinary records do not exist upon inquiry.

Section 3. Upon a request from a nurse against whom disciplinary action has been taken, the board shall expunge records relating to the following categories of disciplinary action:

(1) Consent decrees that are at least five (5) years old if provided that all the terms of the consent decree have been met; and]

(2) Agreed orders and decisions that are at least ten (10) years old and which concern one (1) or more of the following categories, if provided that there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met:

(a) Failed to timely obtain continuing education or AIDS education hours;

(b) Paid fees that were returned unpaid by the bank; or

(c) Practiced as a nurse or advanced practice registered nurse without a current license, provisional license, or temporary work permit.

(3) Agreed orders and decisions that are at least ten (10) years old and which resulted in a reprimand, if provided that there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met.

(4) Agreed orders and decisions that are at least twenty (20) years old, if provided that there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met.

Section 4. The board shall not report cases that have been expunged to another state agency, other board of nursing, or other

organization.

CAROL KOMARA, President

APPROVED BY AGENCY: October 14, 2011.

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Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,
Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email: nathan.goldman@ky.gov

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amended After Comments)**

301 KAR 2:082. Transportation and holding of exotic wildlife.

RELATES TO: KRS 150.010, 150.015, 150.305, 150.320, 150.330, 150.990

STATUTORY AUTHORITY: KRS 65.877, [KRS:] 150.025, 150.180, 150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.180 requires a person transporting live wildlife into Kentucky to obtain a permit from the department. KRS 150.280 authorizes the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. This administrative regulation establishes the procedure for obtaining a transportation permit for exotic wildlife, prohibits the importation and possession of exotic species with the potential to damage native ecosystems, and places restrictions on importing, transporting, and holding species that are potentially dangerous to human health and safety. ~~[EO 2008-546, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts, and Heritage Cabinet.]~~

Section 1. Definitions. (1) "Exotic wildlife" means terrestrial wildlife species which have never naturally existed in the wild in Kentucky including introduced species that have become naturalized, [starling (*Sturnus vulgaris*), English or house sparrow (*Passer domesticus*), and Eurasian collared dove (*Streptopelia decaocto*).]

(2) ["Circus" means a traveling public entertainment show consisting of acrobats, clowns, and trained animals.

~~(3)]~~ "Permit" means an individual or annual transportation permit issued by the department.

Section 2. Exemptions. Transportation permits and captive wildlife permits shall not be required for the importation or possession of exotic wildlife and federally threatened or endangered species listed in this administrative regulation by facilities that are accredited by the American Zoo and Aquarium Association.

Section 3. Prohibited Species. (1) Except as specified in Section 2 of this administrative regulation and subsection (3) of this section, a person shall not import or transport through Kentucky or possess in Kentucky the following:

(a) Baya weaver (*Ploceus philippinus*);

(b) Blackbirds (Genus *Agelaius*), except native species;

(c) Cape sparrow (*Passer melanurus*);

(d) Cowbirds (Genus *Molothrus*), except native species;

(e) Cuckoo (Family *Cuculidae*), except native species;

(f) Dioch or red-billed quelea (*Quelea quelea*);

(g) European blackbird (*Turdus merula*);

(h) Fieldfare (*Turdus pilaris*);

(i) Flying fox or fruit bat (Genus *Pteropus*);

(j) Gambian giant pouched rat (*Cricetomys gambianus*);

(k) Giant, marine, or cane toad (*Bufo marinus*);

(l) Hawaiian rice bird or spotted munia (*Lonchura punctulata*);

(m) Jack rabbit (Genus *Lepus*);

(n) Java sparrow (*Padda oryzivora*);

(o) Madagascar weaver (*Foudia madagascariensis*);

(p) Mistle thrush (*Turdus viscivorus*);

(q) Monk or Quaker parakeet (*Myiopsitta monachus*);

(r) Multimammate rat (Subgenus *Mastomys*);
 (s) Mute swan (*Cygnus olor*);
 (t) Nutria (*Myocastor coypus*);
 (u) Prairie dog (*Cynomys* spp.);
 (v) Raccoon dog (*Nyctereutes procyonoides*);
 (w) San Juan rabbit (*Oryctolagus cuniculus*);
 (x) Sky lark (*Alauda arvensis*);
 (y) Song thrush (*Turdus philomelos*);
 (z) Starlings (Family Sturnidae) including pink starlings or rosy pastors (*Sturnus roseus*), except for Indian Hill mynahs (*Gracula religiosa*);
 (aa) Suricate or slender-tailed meerkat (Genus *Suricata*);
 (bb) Tongueless or African clawed frog (*Xenopus laevis*);
 (cc) Weaver finches (Genus *Passer*), except *Passer domesticus*;
 (dd) White eyes (Genus *Zosterops*);
 (ee) Wild European rabbit (also called the San Juan Rabbit) not distinguishable morphologically from native wild rabbits;
 (ff) Yellowhammer (*Emberiza citrinella*);
 (gg) A member of the following families:
 1. Suidae (pigs or hogs), except for domestic swine;
 2. Viverridae (civits, genets, lingsangs, mongooses and fossas);
 3. Tayassuidae (peccaries and javelinas).
 (2) Prohibited inherently-dangerous wildlife. Except as specified in Section 2 of this administrative regulation and subsections (3), (5), and (6) of this section, a person shall not import or possess in Kentucky the following:
 (a) Adders or vipers (Family Viperidae and Crotalidae) (except native species);
 (b) Alligators or caimans (Family Alligatoridae);
 (c) African buffalo (*Syncerus caffer*);
 (d) Bears (Family Ursidae);
 (e) Cheetah (*Acinonyx jubatus*);
 (f) Clouded leopard (*Neofelis nebulosa*);
 (g) Cobras mambas or coral snakes (Family Elapidae);
 (h) Crocodiles (Family Crocodylidae);
 (i) Elephants (Family Elephantidae);
 (j) Gavials (Family Gavialidae);
 (k) Gila monsters or beaded lizards (Family Helodermatidae);
 (l) Hippopotamus (*Hippopotamus amphibius*);
 (m) Honey badger or ratel (*Mellivora capensis*);
 (n) Hyenas (Family Hyaenidae), all species except aardwolves (*Proteles cristatus*);
 (o) Lions, jaguars, leopards or tigers (Genus *Panthera*);
 (p) Old world badger (*Meles meles*);
 (q) Primates nonhuman (Order Primates);
 (r) Rhinoceroses (Family Rhinocerotidae);
 (s) Sea snakes (Family Hydrophidae);
 (t) Snow leopard (*Uncia uncia*);
 (u) Venomous rear-fanged species (Family Colubridae) except hognose snakes (Genus *Heterodon*);
 (v) Wolverine (*Gulo gulo*); or
 (w) Hybrids of all species contained in this list.
 (3) Upon written request, the commissioner may authorize the importation or possession of the species listed in this section by:
 (a) A zoo or facility that is designated as the official zoo of a municipality;
 (b) A government agency;
 (c) A college or university;
 (d) A licensed or accredited educational or research institution;
 (e) A lawfully operated circus; or
 (f) An exhibitor sponsored or contracted by a lawfully operated state or county fair; or
 (g) ~~A person or organization requesting exemption for a service animal, as defined by the Americans with Disabilities Act.~~
 (4) Wildlife possessed or imported into Kentucky per subsections (3) or (5) of this section shall be maintained within an enclosure ~~sufficient~~sufficient to prevent:
 (a) Escape; and
 (b) Direct contact with the public, except local governments may allow direct contact between the public and Asian elephants (*Elephas maximus*) if:
1. An established local ordinance exists that allows that

contact; and
2. That ordinance provides regulatory standards in the areas of:
a. The safety record of the animal or animals;
b. Proper public safeguards;
c. Experience of handlers;
d. Protective barriers; and
e. Third party liability insurance coverage from death or injury in an amount equal to or greater than \$500,000.~~[an established local ordinance exists that allows such contact.][public; and~~
 (c) Bodily injury to the public.]
 (5) A person may apply for a transportation permit to temporarily transport or possess a prohibited animal listed in this section if the animal is within the state for less than ninety-six (96) hours. Transportation permits shall not be issued for consecutive ninety-six (96) hour periods.
 (6) Possession of an inherently-dangerous animal prior to the effective date of the amendment to this administrative regulation.
 (a) A person who legally possessed in Kentucky an inherently-dangerous animal as defined in subsection (2) of this section prior to July 13, 2005 may continue to possess the animal and shall maintain:
 1. Veterinary records;
 2. Acquisition papers for the animal; or
 3. Any other evidence that establishes that the person possessed the animal in Kentucky prior to July 13, 2005.
 (b) A legally-possessed inherently-dangerous animal shall not be bred or replaced without an exemption as established in Sections 2 and 3(3) of this administrative regulation.
 (7) If any inherently-dangerous animal escapes, either intentionally or unintentionally, the owner of the animal shall immediately contact local emergency services and the department at 800-252-3578 to report the escape or release.
 Section 4. Exotic Wildlife. Unless listed in Section 3(1) of this administrative regulation, or otherwise protected by state or federal law, exotic wildlife shall not:
 (1) Be classified as protected wildlife; and
 (2) Require a permit from the department for possession.
 Section 5. Transportation Permits and Certificate of Veterinary Inspection. (1) Prior to entry into Kentucky, an annual or individual transportation permit as established in 301 KAR 2:081 shall be obtained for all shipments of wildlife. A person shall be responsible for applying for a transportation permit before the person:
 (a) Receives a shipment of wildlife;
 (b) Imports wildlife for their own use or possession; or
 (c) Transports wildlife into and through the state to a destination outside Kentucky;
 (2) A copy of a valid transportation permit shall accompany all shipments of wildlife into Kentucky.
 (a) An individual transportation permit shall be valid for one (1) shipment of wildlife and shall also permit possession of the wildlife for the designated time period.
 (b) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue and shall also permit possession of the wildlife for the designated time period.
 (c) An annual transportation permit holder shall:
 1. Notify the department in writing of any changes or additions subsequent to the original application so that an amended permit may be issued prior to subsequent wildlife importation; and
 2. Notify the wildlife division by telephone at 502-564-3400 or 800-858-1549 Monday through Friday between 8 a.m. and 4:30 p.m. at least forty-eight (48) hours prior to each shipment of wildlife with:
 a. The date of expected shipment;
 b. The source of the shipment;
 c. The species being shipped;
 d. The number of individuals of each species; and
 e. The period of time when the wildlife will be inside the state of Kentucky.

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(3) All shipments of wildlife, except for fish, amphibians, and reptiles, shall be accompanied by a certificate of veterinary inspection stating that the wildlife is free from symptoms of disease. A federal quarantine certificate may be substituted for the certificate of veterinary inspection.

Section 6. The following animals shall not require permits from the department for importation:

- (1) Alpaca (*Vicugna pacos*);
- (2) American bison (*Bison bison*);
- (3) Breeds and varieties of goats derived from the wild goat or bezoar (*Capra aegagrus*);
- (4) Camels (*Camelus bactrianus* and *Camelus dromedarius*);
- (5) Chinchillas (*Chinchilla laniger*);
- (6) Cockatoos (family *Cacatuidae*);
- (7) Domesticated races of ducks and geese (family *Anatidae*) distinguishable morphologically from wild ducks or geese;
- (8) Domesticated races of the European rabbit (*Oryctolagus cuniculus*) distinguishable morphologically from wild rabbits;
- (9) Domesticated races of mink (*Mustela vison*), if:
 - (a) Adults are heavier than 1.15 kilograms; or
 - (b) The fur color can be distinguished from wild mink;
- (10) Domestic swine, except free-roaming or feral wild boars or wild swine;
- (11) Domesticated races of rats (*Rattus norvegicus* or *Rattus rattus*) or mice (*Mus musculus*);
- (12) Domesticated races of turkeys (*Meleagris gallopavo*) recognized by the American Poultry Association and the U.S. Department of Agriculture; but shall not include captive held or bred wild turkeys;
- (13) Domestic yak (*Bos grunniens*);
- (14) Gerbils (*Meriones unguiculatus*);
- (15) Guinea fowl (*Numida meleagris*);
- (16) Guinea pigs (*Cavia porcellus*);
- (17) Hamsters (*Mesocricetus* spp.);
- (18) Indian Hill mynahs (*Gracula religiosa*);
- (19) Llama (*Lama glama*);
- (20) Parrots, lovebirds, cockatiels, budgerigar, parakeets (except monk parakeet (*M. monachus*), macaws (family *Psittacidae*);
- (21) Peafowl (*Pavo cristatus*);
- (22) Pigeons (*Columba domestica* or *Columba livia*) or domesticated races of pigeons;
- (23) Ratites, as defined by KRS 247.870; and
- (24) Toucans (family *Rhamphastidae*).

Section 7. Applying for Permits. (1) An application for a permit shall be made on the appropriate form.

(2) The applicant shall indicate the source of supply of the wildlife.

(3) After the permit is issued, the permit holder shall retain a bill of sale or other written proof to show that the wildlife was obtained from a legal source.

(4) A permit holder shall show this written proof to a conservation officer upon request.

(5) An applicant shall possess an approved permit before transporting exotic wildlife into Kentucky.

(6) A permit application may be denied if the permit holder has been convicted of a violation of:

- (a) Any provision in this administrative regulation; or
 - (b) Another federal or state wildlife law regarding the holding or transportation of exotic wildlife.
- (7) Failure to provide accurate, truthful and complete information on the application form shall result in:
- (a) Immediate withdrawal or revocation of the permit; and
 - (b) Confiscation of the wildlife imported under the permit.
- (8) An applicant shall be responsible for knowing and following local ordinances and rules regarding the wildlife to be held in a locality.

Section 8. Endangered Species. A permit may be issued for the transportation or possession of federally endangered or threatened species if:

- (1) It is not listed in Section 3 of this administrative regulation; and

- (2) Proof of lawful possession and acquisition is provided.

Section 9. Inspections and Permit Revocation. (1) A person holding exotic wildlife shall allow a conservation officer to inspect the holding facilities at any reasonable time.

(2) Captive wildlife may be confiscated and the permit revoked if the permit holder violates any provision of this administrative regulation.

Section 10. Release. With the exception of pheasants and chukars, a person shall not release exotic wildlife into the wild.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Annual Transportation Permit Application, June 2008 edition"; and
- (b) "Individual Transportation Permit Application, June 2008 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.

BENJY KINMAN, Deputy Commissioner,

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

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CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements on the possession and transportation of exotic wildlife.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control the indiscriminate possession and commercialization of wildlife, protect the public and native wildlife from wildlife-borne diseases, to prevent the introduction of wildlife that might be detrimental to native fauna and flora, and to reasonably accommodate public safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.180 requires any person transporting live wildlife into Kentucky to obtain a permit from the department. KRS 150.280 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish the procedures for propagation and holding of protected wildlife. KRS 65.877 authorizes local governments to regulate the holding of inherently dangerous wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will fulfill the purposes of KRS 150.025, 150.180, and 150.280 by defining the permits and procedures that are required for transportation and holding of exotic wildlife. This regulation also assists KRS 65.877 by further defining the holding of inherently dangerous 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: This amendment will allow lawful exhibitors of Asian elephants an exception that allows direct contact between this species and the public only in localities that have an established local ordinance allowing such contact. In particular, this amendment will allow elephant rides by circus or state and county fair attendees if there is an established local government ordinance allowing such activity within certain required criteria. This amendment also removes the exemption that authorizes persons to possess inherently dangerous wildlife service animals, in accordance

with revisions to the American with Disabilities Act that defines service animals to only be dogs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide an exception for local governments who want to allow elephant rides at organized events such as circuses and state and county fairs, while reasonably accommodating public safety and welfare.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who transport or possess species listed as prohibited exotic wildlife will be affected by this amendment. All individuals who transport or possess Asian elephants may be affected by this amendment. There were approximately 131 transportation permits issued to individuals during 2010; 15 permits included Asian elephants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who import Asian elephants and intend to allow the public to have direct contact with the animals during special events shall be responsible for following local ordinances and rules regarding the wildlife to be held in a locality. If a valid local government ordinance does not exist that allows direct contact between the public and Asian elephants, then direct contact shall not be allowed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to individuals who transport or possess exotic wildlife.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Lawful exhibitors of Asian elephants will benefit from this amendment by being able to offer activities such as elephant rides.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals who transport or possess exotic wildlife are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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 and county and city commissions which establish ordinances allowing direct contact between the public and Asian elephants will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.180 requires a person transporting live wildlife into Kentucky to obtain a permit from the department. KRS 150.280 authorizes the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. KRS 65.877 authorizes local governments to regulate the holding of inherently dangerous wildlife.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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 by this administrative regulation during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET

Department of Highways

Division of Maintenance

(As Amended at ARRS, January 9, 2012)

603 KAR 4:035. Logo signs; placement along fully controlled and partially controlled access highways.

RELATES TO: KRS Chapter 45A, 177.0734-177.0738

STATUTORY AUTHORITY: KRS 177.0736, 177.0738, 177.0739

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.0736 and 177.0738 require the Commissioner of the Department of Highways to promulgate administrative regulations for the erection of specific service signs on fully controlled access highways and at interchanges on partially controlled access highways. This administrative regulation ~~establishes~~sets forth the criteria to be followed in the erection and maintenance of specific service signs ~~and attached logo signs~~[designed to inform motorists where travel-related goods and services are available].

Section 1. Definitions. (1) "Clear zone" means the area beginning at the edge of the traveled way that is available for safe use by errant vehicles~~[between the edge of the driving lane of a fully controlled or partially controlled access highway and an imaginary line running parallel to the highway but thirty (30) feet (9.15 meters) away from the highway]~~.

(2) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR 6:070 to administer the specific service signing program in Kentucky. The activities of a~~the~~ contractor~~shall~~ include:

(a) Marketing;

(b) ~~Determining~~[Determination of] business eligibility;

(c) Maintenance, erection, and removal of the specific service signs; and

(d) Installation and removal of logo signs.

(3) "Contract year" means a fiscal year that is July 1 through the following June 30.

(4) "Cover" means to place a protective shield over a logo sign to prohibit viewing of the sign.

(5) ["Double exit interchange" means a grade-separated crossing of roadways having two (2) mainline off-ramps in one (1) direction to provide access to the crossroad.

(6)] "Fully controlled access highway" is defined by [is defined in] KRS 177.0734(1).

(6)](7)] "Highway guide sign" means an official highway sign that[which] is erected by the Department of Highways to:

- (a) Give directions;
- (b) Furnish advance notice of the approach to an intersection or interchange;
- (c) Direct drivers into appropriate lanes;
- (d) Identify a route[and directions on the routes];
- (e) Indicate the distance to a destination[Show distances to destinations]; or
- (f) Provide information or assistance to the traveling public [Indicate access to general]:

- 1. Motorist services;
- 2. Rest areas;
- 3. Scenic areas; or
- 4. Recreational areas[area; and

(g) Provide other information of assistance to the traveling public].

(7)](8)] "Interchange" means a system of interconnecting roadways providing for traffic movement between two (2) or more highways that do not intersect at grade[junction of two (2) or more highways by a system of separate levels that permit traffic to pass from one (1) to another without the crossing of traffic streams].

(8)](9)] "Logo signs" is defined by [are defined in] KRS 177.0734(2).

(9)](40)] "Motorist service" means a place of business providing one (1) or more MUTCD eligible service such as gas, food, lodging, tourist attractions, or camping facilities[or a combination thereof].

(10)](41)] "MUTCD" means Manual on Uniform Traffic Control Devices incorporated by reference in 603 KAR 5:050.

(11)](42)] "Partially controlled access highway" is defined by [is defined in] KRS 177.0734(4). [(13) "Ramp sign" means a sign that is placed along the ramp or at the ramp terminal for service facilities which have business logos displayed along the main roadway.

(14) "Shopping area" means a group of ten (10) or more retail and other commercial establishments located within close proximity of one another that employ a unifying theme carried out by individual shops in their architectural design or their merchandise.

(15) "Shopping mall" means a group of retail and other commercial establishments that is 400,000 square feet or more and is planned, developed, owned, and managed as a single property.

(16) "Single exit interchange" means a grade-separated crossing of roadways having one (1) mainline off-ramp per direction to provide access to the crossroad.]

(12)](17)] "Specific service signs" is defined by [are defined in] KRS 177.0734(3).

(18) "Tourist attractions" means activities or locations that are:

- (a) Natural phenomena;
- (b) Historic;
- (c) Cultural;
- (d) Scientific;
- (e) Educational;
- (f) Religious;
- (g) Of natural beauty or naturally suited for outdoor recreation;
- (h) Similar activities of interest to the traveling public; or
- (i) Shopping malls or shopping areas.]

(13)](19)] "Trailblazing sign" means a sign that[which] provides directional guidance to a particular cultural or recreational site from other highways in the vicinity.

Section 2. General Provisions. (1) The Commissioner of the [Department of Highways] shall authorize the placement of specific service signs with logo signs within the right-of-way of fully controlled and partially controlled access highways.

(2) The Department of Highways shall control the erection and maintenance of specific service and logo signs in accordance with the ["Manual on Uniform Traffic Control Devices" (MUTCD)] [as

incorporated by reference in 603 KAR 5:050 and with the provisions of this administrative regulation].

Section 3. Application and Contracts for Specific Service Signs. [(4)] A business shall apply with the cabinet's contractor for a logo or specific service sign [Application for a business to place a logo relating to gas, food, lodging, camping, or tourist attractions on a specific service sign shall be on "Application for Highway Logo Signing" forms. [(2) The contract to be entered into between the participating business and the Department of Highways' contractor shall be the "Highway Logo Program Agreement" form. Addenda to this form may be included in the contract if appropriate].

Section 4. Location and Erection of Specific Service Signs. (1) A specific service sign shall be located and erected according to the MUTCD in Section 2J [A specific service sign bearing separately attached logo signs shall not be erected less than 800 feet (244 meters) in advance of the exit direction sign at the interchange where motorist services are available.

(2) Spacing between each specific service sign shall be at a minimum of 800 feet (244 meters) and shall be spaced at least 800 feet (244 meters) from any other highway guide signs in existence or proposed for that area.

(3) A specific service sign shall not be erected:

(a) If there is insufficient space between the previous interchange and the interchange where the motorist services are available for the required highway guide signs and a specific service sign;

(b) At an interchange which intersects another limited access facility.

[(c) At an intersection which does not have a convenient reentry in the same direction of travel.

(4)(a) There shall not be more than one (1) specific service sign erected in each direction of an interchange or intersection for the following:

- 1. "GAS";
- 2. "FOOD";
- 3. "LODGING";
- 4. "CAMPING"; or
- 5. "TOURIST ATTRACTIONS".

(b) There shall not be more than four (4) specific service signs erected in one (1) direction of travel for an interchange or intersection.

(c) In one (1) direction of travel, the successive signs shall be erected in the order of "TOURIST ATTRACTIONS" or "CAMPING", "LODGING", "FOOD", and "GAS" unless a combination specific service sign is erected in accordance with Section 5(9) or (10) of this administrative regulation.]

(d) At an interchange with insufficient space available in a single direction for four (4) specific service signs, or]

(2) At an interchange with a request [requests] for more[all five (5)] types of [type] services than signs permitted by the MUTCD, service signing priority[preference] shall be in the order "gas", "food", and "lodging", with the remaining services and attractions determined by distance from the interchange, "camping", and "tourist attractions", with "gas" having the highest priority].

(3) If there is sufficient space available in a single direction for the maximum number of specific signs permitted by the MUTCD, the signs closest to the interchange shall[will] be for "gas", "food", and "lodging".

(4)](6)] A [The] specific service sign [signs] shall be located to avoid visual conflict with other signs within the highway right-of-way[:]

(a) Take advantage of natural terrain;

(b) Have the least impact on the scenic environment; and

(c) Avoid visual conflict with other signs within the highway right-of-way].

(5)](6)] Specific service signs that have unprotected sign supports located within the clear zone shall be of a breakaway design. [Section 5. Interchange Specific Service Sign Composition. (1) A specific service sign shall have a blue background with a white reflectorized border.

(2) The directional arrows and all letters and numbers used in

the name of the type of service and the directional legend shall be white and reflectorized.

(3) All letters used in the name of service and the directional legend shall be ten (10)-inch (254-millimeter) capital letters.

(4) All numbers shall be ten (10)-inches (254-millimeters) in height.

(5) The size of the specific service sign shall comply with the requirements of the MUTCD.

(6) An average measured retroreflectivity of fifty (50) percent or greater shall be maintained on each specific service sign.

(7)(a) For single exit interchanges, a standard full-size specific service sign shall accommodate a maximum of six (6) logo signs.

(b) If the number of businesses does not warrant a full-size sign, a half-size or combination sign may be used.

(8)(a) At a double exit interchange, the specific service sign shall consist of two (2) sections, one (1) for each exit, mounted on the same base.

(b) The top section shall display logo signs for the first exit and the lower section shall display logo signs for the second exit.

(c) Each section shall accommodate a maximum of four (4) logo signs for each service per exit, with the total number of signs not to exceed six (6).

(d) If a type of motorist service is to be signed for only one (1) exit, one (1) section of the specific service sign may be omitted or a single exit interchange sign may be used.

(9) Logo signs for two (2) types of services may be displayed on the same combination specific service sign under the following conditions:

(a) For the two (2) types of services there is a total of not more than six (6) qualified businesses at the interchange;

(b) Up to four (4) logo signs may be displayed for a type of service in combination on a sign;

(c) If four (4) logo signs are displayed for one (1) type of service on a combination specific service sign, more than two (2) logo signs for the other type of service shall not be displayed on the combination specific information sign; and

(d) The name of each type of service shall be displayed above its respective logo signs.

(10) Logo signs shall not be combined on a sign as described in subsection (9) of this section if:

(a) It is anticipated that additional service businesses shall become available in the near future; or

(b) It becomes necessary to display more than a total of six (6) logo signs for the two (2) types of services displayed in combination.

(11)(a) Except at an unnumbered exit, the exit number shall be displayed above the name of the type of service; and

(b) At an unnumbered exit, the legend "NEXT RIGHT" or "NEXT LEFT" shall be displayed above the name of the type of service.

Section 6. Ramp Signs. (1) At a single exit interchange, an exit ramp sign shall be installed except that the logo for a facility visible from the ramp terminal may be omitted.

(2) The logo sign on a ramp sign shall be a duplicate of the corresponding logo installed along the main roadway, but reduced in size.

(3) A ramp sign for a service facility not visible from the ramp terminal may include the distance to the service facility. Direction to the service facility shall be indicated by an arrow.

(4) Ramp signing may be used on ramps at double exit interchanges.

Section 7. Logo Signs. (1) Each logo sign shall have a legend and border. Except, if the business identification symbol or trademark is used alone for a logo sign, the border may be omitted.

(2) Each logo sign on the specific service sign shall be contained within a forty-eight (48)-inch (1219.2-millimeter) wide and thirty-six (36)-inch (914.4-millimeter) high rectangular background area which includes the border, if required.

(3) The principal legend shall be legible from the main traveled way of the highway under normal driving conditions.

(4) A symbol or trademark shall be reproduced in the colors and general shape consistent with customary use and an integral

legend shall be in proportionate size.

(5) A message, symbol, or trademark which resembles any official traffic control device shall be prohibited.

(6) The vertical and horizontal spacing between logo signs on specific service signs shall not exceed eight (8)-inches (203.2-millimeters) and twelve (12)-inches (304.8-millimeters), respectively.

(7) The reflectivity, material composition, and adhesiveness of a logo sign shall comply with the "Standard Specifications for Road and Bridge Construction" (2000 Edition and 2001 Supplement).]

(6) [(8)] If a business ceases to exist or is not in operation for thirty (30) days, the logo sign shall be immediately covered or removed by the contractor [as circumstances of each closing or cessation of business dictate].

(7) [(9)] A [Any] business that [which] operates on a seasonal basis shall remove or cover [make provisions for removing or covering] a permitted logo sign [signs] during the off season and [A business of this type] shall notify the Department of Highways' contractor in writing thirty (30) days before the opening or closing occurs. [(10) In the absence of an official trademark or logo, the official name as indicated in partnership agreements, incorporation documents, or otherwise documented may be substituted on the logo sign.

(11) [(a)] With the exception of "Open 24 Hours" or "24 Hours", descriptive advertising words, phrases or slogans shall not be allowed on a logo sign; i.e., "Joe's 24-Hour Market", "Free Coffee", "Credit Cards Accepted", etc.

(b) Descriptive words which are part of the official name of the business shall be permitted on a logo sign; i.e., "hotel", "motel", "inn", "lodge", "restaurant", "cafe", "cafeteria", "diner", or others with a similar meaning.

(c) The word "Diesel" on a "GAS" logo sign shall be permitted.

(12) If there is more than one (1) eligible business at an interchange with the same business symbol, brand, trademark or logo, more than one (1) business symbol, brand, trademark or logo with the same design may be placed on a specific service sign or on a ramp sign to indicate the distances to the individual businesses.

(13)(a) The Transportation Cabinet shall review and approve the design of a "TOURIST ATTRACTIONS" logo sign prior to its placement on a panel.

(b) The Transportation Cabinet shall not approve the design of a logo sign which would be difficult to comprehend by the traveling public at highway speeds and under normal atmospheric conditions.]

Section 5.4.] [Section 8.] Business Criteria, Eligibility, and Priority. (1) A motorist service business [located at, or conveniently accessible from, an interchange or intersection of a fully-controlled and partially-controlled access highway] shall be eligible for placement of a logo sign on a specific service sign as established in the MUTCD, Section 2J.

(2) An applicant that applies for a FOOD logo and meets MUTCD requirements shall be designated a tier **two (2)** [one] (1) applicant.

(3) In an urban area where space for a logo sign is limited or where logo signs are full, an applicant for a logo sign that meets all the following requirements shall be designated a tier one (1) [A tier one (1) applicant that also meets all the following requirements shall be designated a tier two (2) applicant:

(a) Is in continuous operation fourteen (14) hours a day, six (6) days a week;

(b) Has a seating capacity for a minimum of fifty (50) guests at sit-down, eat-in service; and

(c) [(c-)] Is located within three (3) miles of the interchange. [if it qualifies under the following conditions:

(a) Each business shall offer written assurance that it conforms with all applicable laws and administrative regulations concerning the provision of public accommodations with regard to race, religion, color, sex, age, disability, or national origin.

(b) To qualify for a "GAS" logo sign, a business shall:

1. Be in operation seven (7) days a week, and continuously open for sixteen (16) hours a day; and

2. Have motor vehicle fuel, oil, water, drinking water, restroom facilities, and a telephone available for use by the traveling public.

(c) To qualify for a "FOOD" logo sign, a business shall:

1. Be licensed in accordance with KRS Chapter 219;
2. Be in continuous operation to serve three (3) meals a day, six (6) days a week;
3. Have a seating capacity for a minimum of six (6) guests at sit-down, eat-in service; and
4. Have a telephone and restroom available for use by the traveling public.

(d) To qualify for a "LODGING" logo sign, a facility shall:

1. Be licensed in accordance with KRS Chapter 219;
2. Have a minimum of two (2) rooms available for sleeping accommodations; and
3. Have a telephone available for use by the persons staying at the facility.

(e) To qualify for a "CAMPING" logo sign, a facility shall:

1. Be licensed in accordance with KRS Chapter 219; and
2. Have a minimum of ten (10) parking accommodations which have modern sanitary facilities and drinking water.

(f) To qualify for a "TOURIST ATTRACTIONS" logo sign, a facility shall:

1. Be an activity or location that is one (1) or more of the following:

- a. Natural phenomena;
- b. Historic site;
- c. Cultural site;
- d. Scientific site;
- e. Educational site;
- f. Religious site;
- g. Area of natural beauty;
- h. Area naturally suited for outdoor recreation; or
- i. Shopping malls or shopping areas.

2. Maintain regular hours for that type of establishment;
3. Be licensed in accordance with KRS Chapter 219, if applicable;

4. Have restroom facilities available for use by the traveling public;

5. Have drinking water available for the traveling public;

6. Have an on-premise or nearby public telephone available for use by the traveling public; and

7. Have adequate parking to accommodate its traffic with a minimum of ten (10) spaces.

(4)(2)(a) An application for a logo shall be processed in the order received if space is available on the specific service sign. The eligible business making application for a logo of a specific service which is located nearest to the interchange or intersection shall receive first priority in the selection process.

(b) If a logo sign is full, an applicant shall be placed on a waiting list [Subsequent proximities to the interchange or intersection shall establish subsequent priorities].

(c) A business that is fifteen (15) miles (24.15 kilometers) or more [further than fifteen (15) miles (24.15 kilometers)] from the interchange shall not [be eligible to] qualify for placement of a logo sign.

(d) A [Except, any] business that is fifteen (15) miles (24.15 kilometers) or more [at a distance greater than fifteen (15) miles (24.15 kilometers)] from the interchange with a logo sign in place on January 1, 1994, may continue to display the logo sign until the business fails to meet MUTCD criteria [another criterion of this administrative regulation or is bumped pursuant to Section 9 of this administrative regulation]. [(3)(a) A qualifying food business which is open sixteen (16) hours a day beginning no later than 7 a.m. each day shall have priority over another qualifying food business which does not provide service for this entire time period.

(b) Distance from the interchange shall only be considered in determining priority after the business hours for a qualifying food business have been considered.

(4) A business with an outdoor advertising device determined by the Transportation Cabinet pursuant to 603 KAR 3:080 to be in violation of KRS 177.830 through 177.890 shall not be eligible to qualify for a logo sign until the violation has been removed.

(5) A business with an advertisement on an outdoor advertising device determined by the Transportation Cabinet pursuant to 603 KAR 3:080 to be in violation of KRS 177.830 through 177.890 shall not be eligible to qualify for a logo sign until the violation has been removed.

(6) An activity which is identified at an interchange by a high-way guide sign pursuant to Chapter 2F of the "MUTCD" may also be identified with a logo, but shall have a lower priority for selection than any other eligible business with the same activity.]

(5)(7) A business offering more than one (1) motorist service may display a LOGO on more than one (1) specific service sign if space is available [shall not be eligible to display more than one (1) logo sign with the same logo at an interchange or intersection unless no other eligible business has applied for use of the available space on the second specific service sign].

Section 6.[5:] Duration [Section 9.- Bumping]. (1) A motor service vendor, except for a food vendor, that obtains a logo shall retain that logo until the motor service vendor no longer pays its annual fee or no longer meets MUTCD requirements.

(2)(4) An eligible food business with a higher tier [priority,] pursuant to Section 5(4)(8) of this administrative regulation, shall be permitted to display its sign at the beginning of the next contract year, in the place of a currently displayed, lower tiered [priority] business if:

(a) The specific service sign is fully utilized; and

(b) It files an application by April 1;

(3)(2) The food business with the lower tier that is the greatest distance from the interchange [lowest priority] shall have its logo sign removed at the end of the current contract year.

(4) If more than one (1) applicant applies for an available space for a food logo, the applicant who applied first shall receive the logo.

Section 7.[6:] [Section 10:] Fees. (1)(a) The qualifying business shall pay to the cabinet's [department's] contractor an annual fee of \$600 per direction, in advance, for each logo sign placed on the fully controlled access highway for gas, food, and lodging and \$300 for camping and tourist attractions.

(b) The annual fee for the first year shall accompany the initial application.

(c) If the first contract is for less than one (1) year, the first year's annual fee shall be prorated on a monthly basis with each portion of a month the logo sign is up requiring payment of one-twelfth (1/12) of the fee.

(d) The annual [yearly renewal] fee and application for renewal shall be due forty-five (45) days prior to the annual renewal date.

(e) The payment of this fee shall guaranty [guarantees] that the logo sign shall [will] be displayed for one (1) contract year or portion of the first contract year as long as the business is not in violation of [does not violate any part of] its agreement with the Department of Highways' contractor or the criteria established in the MUTCD.

(2) If a sign for a business is removed or covered [for any reason], a fee of \$100 shall be charged for the reinstallation or uncovering of the sign for each business at each interchange.

(3) The qualifying business shall be responsible for damage to its logo sign caused by an act of vandalism or natural causes requiring repair or replacement of a logo sign.

(4) The qualifying business [A logo sign] shall provide a new or renovated logo sign if the displayed sign:

(a) Would misinform the traveling public; [or]

(b) Is [unsightly,] badly faded [,] or in a state of dilapidation; or

(c) Is in need of repair or replacement due to natural causes or an act of vandalism.

Section 8.[7:] [Section 11:] Trailblazing Signs for Campgrounds.

(1) A campground [Only those campgrounds within] fifteen (15) miles (24.15 kilometers) or less from [of] the centerline of a fully controlled access highway shall be eligible for a new trailblazing sign [signs].

(2) [Only] One (1) specific service trailblazing sign with a logo may [shall] be erected for each business, and the sign [with a logo. This sign] shall be placed a minimum of 300 feet (91.5 meters) in advance of the intersection from which the camping service is available.

(3) A trailblazing sign shall not be erected or displayed if the applicant business is visible [from a point on] within 300 feet (91.5 meters) of the intersection on the fully controlled access highway [within 300 feet (91.5 meters) prior to intersection].

Section 9.8.1~~[Section 12.]~~ Measurements. ~~[(4)]~~ Measurements shall be taken from the end of the exit ramp to the main entrance of the business in the selection of a qualified business~~[businesses]~~ for a logo sign~~[signs]~~ shall be from the juncture of the center line, measured between the center edges of the main traveled way of the fully controlled or partially-controlled access road and the center line of a nonlimited access crossroad.

~~(2)~~ Selection of businesses for display of logo signs shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad or public thoroughfare to the particular motorist service].

Section 10.9.1~~[Section 13.]~~ Logo Sign Contract. ~~[(4)(a)–A Highway Logo Program Agreement between a participating business and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of a logo sign.]~~

~~(1)(a)(b))~~ A~~[Each]~~ logo sign and contract shall be subject to review by the Transportation Cabinet~~[at any time]~~.

~~(b)(c))~~ A contract shall be revoked for a failure to comply with ~~[any of]~~ the requirements ~~established~~~~[set forth]~~ in the MUTCD or in this administrative regulation including nonpayment by ~~a~~~~[the]~~ participating business~~[shall be cause for the revocation of a logo sign contract]~~.

~~(c)(d))~~ If ~~a~~~~[the]~~ contract is revoked for cause, the prepaid fees for a contract year or a portion thereof~~[,]~~ shall not be refunded.

~~(2)~~~~[If the Department of Highways or its contractor determines that a contract, business, or logo sign does not comply with the requirements of this administrative regulation,] The Department of Highways' contractor shall notify the business in writing of a~~~~[the]~~ violation. ~~[(3) If the business fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the logo signs.]~~

~~(3)(4))~~ The Department of Highways contractor shall take immediate action to cancel the contract and remove, replace, or cover the logo signs if a business has been issued a second notice of noncompliance within~~[if, in]~~ a single contract year~~[, a business has been issued a notice pursuant to subsection (2) of this section and is again in noncompliance with this administrative regulation, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the logo signs]~~.

Section 11.10.1~~[Section 14.]~~ Appeal to the Commissioner of Highways for Exemption. (1) The Commissioner of Highways shall~~[may]~~ grant an exemption to a business from the necessity of complying with a requirement ~~established~~~~[set forth]~~ in this administrative regulation if:

~~(a)~~~~[It is determined by the commissioner that]~~ The exemption is in the public interest; ~~and~~

~~(b)~~ The business conforms to the Federal Highway Administration standards for specific service signs~~[, and]~~

~~(2)~~ In qualifying for a logo sign, a business ~~that~~~~[which]~~ conforms to ~~[all]~~ MUTCD~~[the]~~ requirements ~~and the requirements established~~~~[set forth]~~ in this administrative regulation shall be given a preference over a business not conforming to ~~[all of]~~ the requirements ~~[in qualifying for placement of a logo sign on a specific service sign]~~.

~~(3)~~ An appeal ~~by a business~~ of the denial of a request for an exemption ~~[by a business to the Commissioner of Highways]~~ shall be filed ~~as established in Section 13.12.1~~ of this administrative regulation~~[in the form of an appeal as prescribed for in Section 16 of this administrative regulation]~~.

Section 12.14.1~~[Section 15.]~~ Encroachment Permits. The Department of Highways' contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for ~~a~~~~[each new]~~ specific service sign proposed to be erected, modified, or removed from state-owned right-of-way.

Section 13.12.1~~[Section 16.]~~ Appeal of Department of Highways Action. (1) A business or person aggrieved by the action taken by the Department of Highways or its contractor in administering this administrative regulation may request a formal hearing

before the Commissioner of the Department of Highways.

(2) The request for ~~a~~~~[the]~~ formal hearing shall:

(a) Be filed in writing ~~to~~~~[with]~~ the Commissioner, Department of Highways, 200 Mero Street~~[501 High Street]~~, Frankfort, Kentucky 40622; and

(b) ~~State~~~~[Set forth]~~ the nature of the complaint and the grounds for the appeal.

~~(3)(a)~~~~[Upon receipt of a request for a hearing,] The Office of Legal Services for~~~~[general counsel of]~~ the Transportation Cabinet shall assign the matter to a hearing officer~~[examiner]~~.

(b) The hearing officer shall issue ~~a~~~~[his]~~ recommended order to the Commissioner of the Department of Highways.

(c) The Commissioner of the Department of Highways shall issue ~~a~~~~[the]~~ final order~~[of the department]~~ in ~~the~~~~[this]~~ matter.

(4) A party aggrieved by the final order of the Department of Highways may appeal. **The appeal shall be in accordance with**~~[pursuant to]~~ the provisions of KRS 13B.140.~~[Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Application for Highway Logo Signing" forms prepared by Kentucky Logos, Inc. in March 1997;~~

~~(b) "Highway Logo Program Agreement" form prepared by Kentucky Logos, Inc. in March 1997; and~~

~~(c) "Standard Specifications for Road and Bridge Construction," published by the Kentucky Transportation Cabinet (2000 Edition and 2001 Supplement)~~

~~(2)(a)~~ This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Transportation Cabinet, Department of Highways, Division of Traffic, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is (502) 564-4105.

~~(b)~~ The material in subsection (1)(a) and (b) of this section also may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Logos, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is 1-800-469-5646 or (502) 227-0802. The fax number is (502) 227-7286.]

STEVE WADDLE, State Highway Engineer

MIKE HANCOCK, Secretary

D. ANN DANDELO, Asst. General Counsel

APPROVED BY AGENCY: November 15, 2011

FILED WITH LRC: November 15, 2011 at 10 a.m.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on the Deaf and Hard of Hearing (As Amended at ARRS, January 9, 2012)

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing, and speech impaired.

RELATES TO: KRS 12.290, Chapter 45A, 61.878, 163.500-163.527, 334.010(9), 334.020, 29 U.S.C. 794, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 12.290, 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations in compliance with federal mandates to provide accessibility to services by persons who are deaf or hard-of-hearing. KRS 163.525(5) requires the Commission on the Deaf and Hard of Hearing to promulgate administrative regulations to establish procedures for application for, and distribution of, specialized telecommunications equipment. This administrative regulation establishes eligibility criteria, requirements for application, and certification procedures.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(2) "Application" means the current KCDHH Telecommunications Access Program application entitled "Telecommunications Access Program Application and Certification".

(3) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH.

(4) "APRN" means Advanced Practice Registered Nurse licensed by the Kentucky Board of Nursing.

(5) "Audiologist" is defined at KRS 334A.020 (5), and is limited to a person licensed by the board, as defined at KRS 334A.020 (1).

(6) [(5)] "Certification" means professional verification of the extent and permanence of the applicant's disability.

(7) [(6)] "Deaf" and "hard of hearing" are defined by KRS 163.500.

(8) [(7)] "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(9) [(8)] "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(10) [(9)] "Hearing instrument specialist" means "specialist in hearing instruments" as defined at KRS 334.010(9).

(11) [(10)] "KCDHH" means the Kentucky Commission on Deaf and Hard of Hearing, as described at KRS 163.506.

(12) [(11)] "Physician" means a person:

(a) With a medical degree;

(b) Licensed by the state in which he or she practices medicine; and

(c) Recognized, by the state Board of Medical Licensure in the state in which the physician practices, as a specialist in:

1. Family practice;

2. General practice; [or]

3. Otolaryngology; or

4. Internal Medicine.

(13) [(12)] "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(14) [(13)] "Specialized telecommunications equipment" or "STE" is defined by KRS 163.525(1)(a):

(a) Telecommunication devices for the deaf;

(b) Amplifiers;

(c) Voice carry over telephones;

(d) Captioned telephones;

(e) Visual, audible, or tactile ring signal devices; and

(f) Appropriate wireless devices.

(15) [(14)] "Speech-language pathologist" means a person licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment of speech-language pathology.

(16) [(15)] "Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic air waves or hard wired methods.

(17) [(16)] "Telecommunications Access Program" is defined by KRS 163.525(1)(b).

Section 2. General Applicant Criteria. (1) An applicant shall be:

(a) A person who has resided in Kentucky for one (1) year prior to the date of application, as demonstrated by one (1) or more of the following. The person:

1. Is in possession of a valid [Kentucky] driver's license or photo ID issued by the state of Kentucky;

2. Is currently registered to vote in Kentucky;

3. Owns an automobile registered in Kentucky [a registered automobile];

4. Filed a Kentucky income tax return for the calendar year preceding the date of application;

5. Is stationed in Kentucky on active military orders for at least one (1) year as a member of the Armed Forces, or is a dependent of the Armed Forces member; or

6. Is currently enrolled as a student at an institution [institution] of higher learning located in Kentucky and meets the residency requirements of 13 KAR 2:045;

(b) At least five (5) years of age and if the applicant is between five (5) and eighteen (18) years of age, the applicant's parents or guardians shall:

1. Apply on behalf of the child; and

2. Assume full responsibility for the equipment; and [and]

(c) Deaf, hard of hearing, or speech impaired such that the applicant cannot use the telephone for communication without adaptive specialized telecommunications equipment; and [and];

(2) [(d)] In addition to requirements listed in subsection (1) [(a), (b), and (c)] of this section, an applicant for a wireless STE shall be at least thirteen (13) years of age.

(3) [(2)] An application shall be:

(a) Made on a "Telecommunications Access Program Application and Certification" form;

(b) Signed and submitted in person or by mail; and

(c) Accompanied by:

1. A copy of a telephone bill showing telephone number and name and address of the person being billed for residential telephone customers, unless the applicant is applying under the conditions of Section 2(6);

2. A copy of the applicant's proof of residence; and

3. Document of certification, as required by subsection (5) [(4)] of this section.

(4) [(3)] An applicant shall provide additional supporting documentation to verify information provided on the application, if requested by KCDHH.

(5) [(4)] An applicant shall provide professional certification of the extent and permanence of the applicant's disability.

(a) Certification shall be at the applicant's expense.

(b) Certification shall be performed and provided by:

1. A licensed physician or licensed APRN;

2. A licensed audiologist;

3. A licensed speech-language pathologist;

4. A licensed hearing instrument specialist; or

5. With prior approval by KCDHH, a [A] licensed or certified individual that works for a public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals.

(6) [(5)] Except for an individual receiving assistance from a program providing telephone services to persons normally unable to afford the services or an applicant for a wireless device, an applicant shall subscribe to or have currently applied for telephone service, including:

(a) Installation of a telephone line in the applicant's home, at the applicant's expense; and

(b) Payment of monthly telephone bills.

(7) [(6)] Eligible applicants shall be awarded program participation on a first-come, first-serve basis, in accordance with the approved date, as determined by the dated signature of the Telecommunications Access Program staff. Eligible applicants shall be placed on a waiting list during times of fiscal constraint.

(8) [(7)] KCDHH shall distribute the STE in compliance with:

(a) The Model Procurement Code, KRS Chapter 45A; and

(b) 735 KAR 1:020.

(9) [(8)] Not more than two (2) STEs one (1) of which shall be a visual, auditory, or tactile signaler, shall be distributed to a deaf, hard of hearing, or speech-impaired individual per telecommunications access line.

Section 3. Application Process. (1) The KCDHH staff shall provide assistance in completing forms if requested by an applicant.

(2) The Telecommunications Access Program staff shall review each application in the order the KCDHH office receives them, in order to determine if:

(a) All the necessary information is completed on the application;

(b) All required documentation is included; and

(c) All eligibility requirements are met.

(3) If the criteria in subsection 2 of this section are met, the application shall be approved, dated, and signed by the Telecommunications Access Program staff. The approved date shall determine the first-come, first-serve roster.

(4) The KCDHH shall, within sixty (60) days of receipt of the application, notify an applicant if the application has been approved

or rejected.

(5) The KCDHH shall, within sixty (60) days of receipt of the application, provide to an ineligible applicant, written reasons for the determination of ineligibility. An applicant denied participation may reapply if, due to a change in conditions, the eligibility requirements as delineated in Section 2 of this administrative regulation are met.

(6) Training to properly select and use the STE shall be provided to applicants upon request.

Section 4. An application shall be denied if:

(1) The applicant does not meet the eligibility requirements as established in KRS 163.525, this administrative regulation or 735 KAR 1:020;

(2) The applicant has received STE from the Telecommunications Access Program within the preceding four (4) years;

(3) The applicant is an active consumer of the Office of Vocational Rehabilitation and receives a STE as part of an individual plan of employment, also known as an "IPE";

(4) The applicant has negligently or willfully damaged a STE previously received from the KCDHH's Telecommunications Access Program, or has violated another provision of the law governing the Telecommunications Access Program;

~~(5) The applicant fails to provide a police report of a stolen device or refuses to cooperate with the police investigation in the prosecution of the suspect, including the refusal to testify in court when subpoenaed to do so;~~

~~(6) A police report of a stolen device shows the applicant was negligent, for example by leaving the doors to the house or car unlocked or unattended;~~ (7) The applicant has the STE stolen or has lost or sold the STE; or

~~(6) [(8)]~~ If replacing the equipment after four (4) years have passed, the original STE is found to be technologically up to date and functional by the KCDHH.

Section 5. Replacing the Specialized Telecommunications Equipment. During times of fiscal constraint a reapplication shall be accepted and held pending until funds become available. An applicant shall provide verification of eligibility when the reapplication is processed. (1) A recipient may apply to replace the original STE if:

(a) The STE is damaged as a result of a natural disaster;

(b) There is a change in status, such as deteriorating vision or hearing;

(c) A new device has become available through the Telecommunications Access Program that is more appropriate to the recipient's disability than a device previously received through the program; or

(d) It has been four (4) years since the applicant last received STE.

(2) As funds are available, new STE to replace existing STE shall be issued to applicants who:

(a) Demonstrate eligibility; and

(b) Comply with the provisions of the administrative regulations governing the Telecommunications Access Program established in this administrative regulation and 735 KAR 1:020.

(3) Priority shall be given in the distribution of STE to first-time recipients during times of fiscal constraint.

(4) If a replacement is requested because the STE is damaged as a result of a natural disaster, the recipient shall first send the damaged equipment to the KCDHH, or directly to the vendor as directed by Telecommunications Access program staff.

(a) If necessary, the KCDHH shall send the damaged STE to the vendor for verification of ~~irreparable~~~~[unrepairable]~~ damage.

(b) If the vendor certifies to the KCDHH that the equipment provided to the recipient is ~~irreparable~~~~[unrepairable]~~ due to natural disaster, a replacement shall be issued to the recipient, upon reapplication, subject to:

1. Equipment availability;

2. Compliance with eligibility criteria established in this administrative regulation;

3. The first-come, first-served provision; and

4. Availability of funds.

(5) If the recipient obtains certification from a physician, audiologist, hearing instrument specialist, APRN, or speech-language

pathologist stating that the recipient will benefit from another device available through the KCDHH Telecommunications Access Program due to a change in disability status or a new device becoming available, then a replacement shall be issued to the applicant based on first-come, first-served basis and availability of funds. As an alternative, a public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

~~(6) [If a replacement is requested due to the STE being stolen, then the recipient shall:~~

~~(a) Notify local police within thirty (30) days of the theft;~~

~~(b) Forward a copy of the police report to the KCDHH within ten (10) working days of the date the theft was reported; and~~

~~(c) Aid in the prosecution of the alleged perpetrator of the theft, if a suspect is identified. (7)]~~ If a replacement is requested because four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.

(a) The KCDHH shall determine if the original STE is technologically obsolete or nonfunctional.

(b) If the original STE is:

1. Technologically obsolete or nonfunctional, then the recipient shall follow the application process to replace the equipment as delineated in this administrative regulation and 735 KAR 1:020; or

2. Not determined to be technologically obsolete or nonfunctional then the application for a replacement shall be denied and the original STE shall be returned to the recipient.

Section 6. Fraud. If a recipient obtained STE under false premises or through misrepresentation of facts on the application, the KCDHH shall demand return of the equipment immediately. Upon demand, the recipient shall return the STE and shall be ineligible to participate in the KCDHH Telecommunications Access Program thereafter.

Section 7. Confidentiality. All applicant and recipient information shall be kept confidential in compliance with the Open Records Law, KRS 61.878.

Section 8. Incorporation by Reference. (1) "Telecommunications Access Program Application and Certification", November 2011~~[April 2009]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the offices of the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, phone 800-372-2907, V/TDD or (502) 573-2604 V/TDD, Monday through Friday, 8 a.m. to 4:30 p.m.

VIRGINIA L. MOORE, Executive Director

APPROVED BY AGENCY: November 14, 2011

FILED WITH LRC: November 14, 2011 at 3 p.m.

CONTACT PERSON: Rowena Holloway, Internal Policy Analyst III, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 (V/T), fax (502) 573-2604, email Row.holloway@ky.gov.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, January 9, 2012)**

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

RELATES TO: KRS 12.290, Chapter 45A, 61.878, 163.500-163.527, 334.010(9), 334.020, 29 U.S.C. 794, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 12.290, 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations in compliance with federal mandates to provide accessibility to services by persons who are deaf or hard of hearing. KRS 163.525(5) requires the Commission on the Deaf and Hard of Hearing to promulgate administrative regula-

VOLUME 38, NUMBER 8 – FEBRUARY 1, 2012

tions to establish procedures for application for, and distribution of, telecommunications devices. This administrative regulation establishes procedures for specialized telecommunications equipment vendors, for security, and for maintenance and repair.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(2) "Application" means the current KCDHH Telecommunications Access Program application entitled "Telecommunications Access Program Application and Certification".

(3) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH.

(4) "APRN" means Advanced Practice Registered Nurse licensed by the Kentucky Board of Nursing.

(5) "Audiologist" is defined at KRS 334A.020(5), and is limited to a person licensed by the board, as defined at KRS 334A.020(1).

(6) ~~[(5)]~~ "Certification" means professional verification of the extent and permanence of the applicant's disability.

~~(7) [(6)] "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH, as determined by the Telecommunications Access Program staff.]~~ "Deaf" and "hard of hearing" are defined by KRS 163.500.

~~(8) [(7)]~~ "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

~~(9) [(8)]~~ "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

~~(10) [(9)]~~ "Hearing instrument specialist" means "specialist in hearing instruments" as defined at KRS 334.010(9).

~~(11) [(10)]~~ "KCDHH" means the Kentucky Commission on Deaf and Hard of Hearing, as described at KRS 163.506.

~~(12) [(11)]~~ "Physician" means a person:

(a) With a medical degree;

(b) Licensed by the state in which he or she practices medicine; and

(c) Recognized, by the state Board of Medical Licensure in the state in which the physician practices, as a specialist in:

1. Family practice;

2. General practice;~~or~~

3. Otolaryngology;~~or~~

4. Internal Medicine.

~~(13) [(12)]~~ "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

~~(14) [(13)]~~ "Specialized telecommunications equipment" or "STE" is defined by KRS 163.525(1)(a);~~[-]~~

(a) Telecommunication devices for the deaf;

(b) Amplifiers;

(c) Voice carry over telephones;

(d) Captioned telephones;

(e) Visual, audible, or tactile ring signal devices; and

(f) Appropriate wireless devices.

~~(15) [(14)]~~ "Speech-language pathologist" means a person licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment of speech-language pathology.

(16) "Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic air waves or hard wired methods.

~~(17) ["Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic air waves or hard wired methods.]~~

~~(18)]~~ "Telecommunications Access Program" is defined by KRS 163.525(1)(b).

Section 2. Processing System. (1) The KCDHH shall use accounting procedures consistent with Commonwealth accounting practices in compliance with applicable sections of the Model Procurement Code, KRS Chapter 45.

(2) Contracting, purchasing, bidding, invoicing, and payment practices shall be conducted in accordance with applicable provisions

of the Model Procurement Code, KRS Chapter 45A, and shall be applied uniformly to applicants and vendors.

(3) The KCDHH Telecommunications Access Program accounts shall be audited on a regular basis by the Auditor of Public Accounts.

Section 3. Vendor and Recipient Participation. (1) The vendor shall be responsible for complying with the provisions of the Model Procurement Code, KRS Chapter 45, as established in the contract between the vendor and KCDHH. The vendor shall:

(a) Mail or otherwise deliver the STE directly to the recipient's Kentucky residence; and

(b) Send the following to the KCDHH:

1. An itemized invoice with the recipient's name and STE model and serial number; and

2. A copy of the delivery receipt for the STE sent to the recipient.

(2) The vendor, in exchange for an itemized invoice and a copy of the delivery receipt, shall be paid by the KCDHH or a bank, pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.

(3) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to their STE. This includes the responsibility for the maintenance and repair of those features not specified in the vendor contract.

(4) Ownership rights and responsibilities for the STE shall belong to the recipient, as evidenced by the recipient's copy of the delivery receipt. Equipment obtained under this program shall not be sold, loaned, or otherwise transferred out of the possession of the originally-authorized recipient. Any person who attempts to sell or who knowingly purchases stolen equipment shall be prosecuted to the fullest extent of the law.

(a) A recipient shall not be responsible for the actual maintenance and repair of the equipment during the applicable~~four (4) year~~ warranty period. In order to have a malfunctioning STE repaired, the recipient shall:

1. Contact the KCDHH; and

2. Comply with the repair and maintenance procedures established in Section 5 of this administrative regulation.

(b) Each recipient shall:

1. Assume responsibility for monthly maintenance of the telecommunications access line as described in 735 KAR 1:010; and

~~2. [Purchase batteries and paper for the STE; and~~

~~3.] Pay for other general costs and supplies associated with the functions and use of the STE.~~

(c) A recipient shall be responsible for the loss of an STE received under the auspices of the KCDHH Telecommunications Access Program.

Section 4. Security. (1) The recipient shall notify the KCDHH within ten (10) working days if the equipment is lost or damaged.~~[(2) If the equipment is stolen, the recipient shall:~~

~~(a) Notify local police within thirty (30) days of the theft;~~

~~(b) Forward a copy of the police report to the KCDHH within ten (10) working days of the date the theft was reported; and~~

~~(c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.]~~

Section 5. Maintenance and Repair Procedures. (1) A recipient shall report equipment in need of repair to the KCDHH. Telecommunications Access Program staff shall inform the recipient of:

(a) The mailing address and telephone number of the manufacturer; and

(b) The purchase order number for the equipment.

(2) The recipient shall:

(a) Report the problem to the manufacturer;

(b) Ask that the manufacturer pay for shipping the defective equipment:

1. To the manufacturer's designated place of repair; and

2. Back to the recipient, once repaired.

(3) The recipient shall determine from the contracted repair agent whether the STE is repaired or is not repairable. The recipient shall obtain and provide verification of the transaction to KCDHH. If the warranty period has ended, the recipient shall as-

sume financial responsibility for repair of the equipment.

(4) A recipient shall notify the KCDHH immediately of a change of residential address.

VIRGINIA L. MOORE, Executive Director

APPROVED BY AGENCY: November 14, 2011

FILED WITH LRC: November 14, 2011 at 3 p.m.

CONTACT PERSON: Rowena Holloway, Internal Policy Analyst III, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 (V/T), fax (502)573-2604, email row.holloway@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Administration and Financial Management
(As Amended at ARRS, January 9, 2012)

907 KAR 1:018. Reimbursement for drugs.

RELATES TO: KRS 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.6316(4), 217.015, [311.550, 311.560,] 42 C.F.R. 440.120, 447.500 - 447.520[447.331, 447.332, 447.333], 42 U.S.C. 256b, 1396a - 1396d, 1396r-8[1396a-d]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561(2), 205.6316(4), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8, 2005 Ky. Acts ch. 99]

NECESSITY, FUNCTION, AND CONFORMITY: [2005 Ky. Acts ch. 99 reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] 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 promulgate an administrative regulation 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]. KRS 205.561(2) and 205.6316(4) require the department to promulgate an administrative regulation to establish a dispensing fee for prescriptions. This administrative regulation establishes the Medicaid program reimbursement policies for drugs dispensed to Medicaid recipients who are not enrolled with a managed care organization[method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program and the dispensing fees].

Section 1. Definitions. (1) **"Actual 340B acquisition cost" means the acquisition cost of a drug purchased through the 340B program, which is a federally-established drug discount program available for covered entities under 42 U.S.C. 256b(a)(4).**

(2) "Bioequivalent" means determined to be bioequivalent by the FDA in accordance with 21 C.F.R. Part 320.

(3) "A-rated generic product" means a product that the FDA has found to be bioequivalent.

(2) "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.

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

(4) "Direct price" means the estimated acquisition cost for which a retailer can purchase a drug product directly from the manufacturer as listed in a nationally recognized comprehensive drug data file for which the department has contracted.

(5) "Dispensing fee" means a professional fee paid to reimburse a pharmacy for costs associated with the dispensing of a prescribed drug.

(6) "FDA" means the Food and Drug Administration of the United States Department of Health and Human Services.

(7) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(8) "Federal upper limit" [or "FUL"] means the maximum federal financial participation available toward reimbursement for a

given drug dispensed to a Medicaid recipient.

(9) "Food and Drug Administration" or "FDA" means the Food and Drug Administration of the United States Department of Health and Human Services.

(8) "State maximum allowable cost" or "MAC" means the maximum amount established by the department that the department shall reimburse for a drug.

(10) "Therapeutically equivalent" means determined to be therapeutically equivalent by the FDA.

(11) "Weighted majority of volume purchased" means a calculation used in determining a state maximum allowable cost [or MAC] that is based on market share.

(12) "Wholesale acquisition cost" or "WAC" means the estimated acquisition cost for the wholesaler as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

Section 2. Reimbursement. (1) Drug copayment requirements and provisions shall be as established in 907 KAR 1:604.

(2) The department:

(a) May establish a state maximum allowable[maximum-allowable] cost for a drug:

1. If two (2) or more bioequivalent[A-rated] therapeutically-equivalent, multisource, noninnovator drugs with a significant cost difference exist for the given drug; and

2. By reviewing the pricing sources for each drug (both the wholesale acquisition cost and the direct price)[WAC][AWP, WAG,] [and direct price for the drug] as identified in a nationally-recognized comprehensive drug data file for which the department has contracted and utilizing the weighted majority of volume purchased[.]. [For example, if for a given drug there are two (2) therapeutically-equivalent drugs with one (1) priced at five (5) dollars per pill and possessing thirty (30) percent of the market share and the other priced at one (1) dollar per pill and possessing seventy (70) percent of the market share, the department shall factor in the market share in determining the state MAC price rather than simply averaging the two (2) prices]; and

(b) Shall maintain a current listing of drugs and their corresponding state maximum allowable[maximum-allowable] costs via a link from the department web site located at the following address:

<http://www.chfs.ky.gov/dms>.

(3) An appeal of a state maximum allowable[maximum-allowable] cost price for a drug shall be as established in this subsection[follows:]

(a)[4-] The provider shall email or fax a completed Kentucky Medicaid MAC Price Research Request Form [(which is available at the department's website which is <http://www.chfs.ky.gov/dms>)] to Magellan Medicaid Administration in accordance with the instructions on the form["MAC Price Inquiries and Research Request Form" (which is available at the department and at the Web site address:

<http://kentuckyfhsc.com/providers/documents.asp>, by clicking on "MAC Price Inquiries and Research Request Form or via the specific Web site address:

<http://kentuckyfhsc.com/Downloads/providers/KYRxMACResearchRequestForm.pdf>) to First Health Services Corporation. The email address is rebate@fhsc.com and the fax number is 804-217-7911; or

2. The provider shall contact the First Health Services Corporation technical call center at 1-800-432-7005 and provide information regarding the appeal including the national drug code for the drug in question;]

(b) An appeal of a state maximum allowable[maximum-allowable] cost price for a drug shall be investigated and resolved within three (3) business days[.];

(c) If available, the provider shall be supplied with the name of one (1) or more manufacturers who have a price comparable to the state maximum allowable[maximum-allowable] cost price[.];

(d) The state maximum allowable[maximum-allowable] cost price and effective date of that price shall be adjusted accordingly, retroactive to the date of service for the state maximum allowable[maximum-allowable] cost price prescription in question, if:

1. It is determined that no manufacturer exists in the price range referenced in paragraph (c) of this subsection; or

2. The provider is able to document that despite reasonable efforts to obtain access, he or she does not have access to the one (1) or more manufacturers supplied to the provider.~~[-; and]~~

(e) When the change in state ~~maximum allowable~~~~[maximum allowable]~~ cost price for a price that is adjusted becomes effective, the provider shall be informed that the claim may be rebilled for the price adjustment.

(4) Reimbursement to a pharmacy participating in the Medicaid Program for a drug listed in the Kentucky Medicaid Outpatient Drug List established in 907 KAR 1:019 and provided to an eligible recipient shall be determined in accordance with the requirements established in this subsection.

(a) An appropriate rebate agreement shall be signed by the drug manufacturer or the drug shall be provided based on a prior authorized exemption from the rebate requirement in accordance with 907 KAR 1:019.

(b) Drug costs shall be determined in the Pharmacy Program using drug pricing and coding information obtained from a nationally-recognized comprehensive drug data file for which the department has contracted with pricing based on the actual package size utilized.

(c) Reimbursement for a drug shall be the lesser of:

1. The federal upper limit, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;
2. The state ~~maximum allowable~~~~[maximum allowable]~~ cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;
3. The estimated acquisition cost (EAC) which shall:
 - a. For a generic drug, equal the ~~WAC plus 3.2~~ ~~[AWP minus fourteen (14)]~~ percent, plus a dispensing fee and, if applicable, a unit dose addition; ~~or~~~~and]~~
 - b. For a brand name drug, equal the ~~WAC plus two (2)~~ ~~[AWP minus fifteen (15)]~~ percent, plus a dispensing fee and, if applicable, a unit dose addition; ~~or~~
4. The usual and customary billed charge.

(d) Reimbursement for the dispensing of an emergency supply of a drug shall be:

1. Made only outside normal business hours of the department's Drug Prior Authorization office and as permitted in accordance with 907 KAR 1:019, Section 4; and
2. The lesser of:
 - a. The federal upper limit, if one (1) exists, plus the dispensing fee for the prescription and, if applicable, a unit dose addition;
 - b. The state ~~maximum allowable~~~~[maximum allowable]~~ cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;
 - c. The estimated acquisition cost (EAC), which shall:
 - (i) For a generic drug, equal the ~~WAC plus 3.2~~ ~~[AWP minus fourteen (14)]~~ percent, plus a dispensing fee and, if applicable, a unit dose addition; ~~or~~~~and]~~
 - (ii) For a brand name drug, equal the ~~WAC plus two (2)~~ ~~[AWP minus fifteen (15)]~~ percent, plus a dispensing fee and, if applicable, a unit dose addition; ~~or~~
 - d. The usual and customary billed charge.
- (e) If the dispensing of an emergency supply results in partial filling of the quantity or amount prescribed, reimbursement for the partial filling of the remainder of the prescription shall utilize the methodology specified in paragraph (c) of this subsection, except that only one (1) dispensing fee shall be allowed for the combined partial fill and subsequent completion fill.
- (f) Reimbursement shall be denied if:
 1. The recipient is ineligible on the date of service;
 2. The drug is excluded from coverage in accordance with 907 KAR 1:019, Section 3; or
 3. Prior authorization is required by the department and ~~the request for prior authorization has not been submitted~~~~[granted] prior to dispensing of the drug~~~~[has been denied or has not been requested]~~.
- (g) For a nursing facility resident meeting Medicaid nursing facility level of care criteria in accordance with 907 KAR 1:022, there shall not be more than one (1) dispensing fee allowed per provider per recipient per drug within a rolling twenty-four (24) day

period unless:

1. The drug is a Schedule II, III, or IV controlled substance or a legend intravenous drug, in which case up to three (3) additional dispensing fees shall be allowed;
2. The drug is a nonsolid dosage form, in which case one (1) additional dispensing fee shall be allowed;
3. The prescribed dosage has been changed, in which case one (1) additional dispensing fee shall be allowed; or
4. The department determines that it is in the best interest of the recipient to allow the additional dispensing fee.

(h) For a nursing facility resident meeting Medicaid nursing facility level of care criteria and if appropriate and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug, paid for by Medicaid, shall be returned to the originating pharmacy and the department shall be credited for the cost of the drug and the unit dose packaging cost.

(i)1. A maintenance drug shall be dispensed in accordance with 907 KAR 1:019.

~~2. The department shall not reimburse for a refill of a maintenance drug prior to the end of the dispensing period established in 907 KAR 1:019 to an outpatient service recipient, except for an individual receiving supports for community living services, up to a ninety-two (92) day supply with only one (1) initial dispensing fee and one (1) refill dispensing fee allowed within the ninety-two (92) day time period unless the department determines that it is in the best interest of the recipient to allow any additional dispensations or dispensing fees.~~

~~(j) [-; and~~

~~3. [-]2.] For an outpatient service recipient receiving services via the Supports for Community Living Program, there shall not be more than:~~

- ~~1. [-]a.] One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3.~~[clause c]~~ of this paragraph~~[subparagraph]~~;~~
- ~~2. [-]b.] Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a Schedule II, III or IV controlled substance; or~~
- ~~3. a. [-]e.-(i)] Two (2) dispensing fees allowed per drug within a calendar month for a drug that is a nonsolid dosage form; or~~
- ~~b. [-]f.-(ii)] Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care.~~

~~(k) [-]g.] For a personal care recipient, there shall not be more than:~~

1. One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;
2. Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a Schedule II, III or IV controlled substance; or
3. a. Two (2) dispensing fees allowed per drug within a calendar month for a drug that is a nonsolid dosage form; or
- b. Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care.

~~(l) [-]h.] Reimbursement shall not be made for more than one (1) prescription to the same recipient on the same day for a drug with the same:~~

1. National Drug Code (NDC); or
2. Generic name, strength, and dosage form.

(5) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.

(6) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

(7) If a payment is made for a drug for which there is no authorization as required in accordance with 907 KAR 1:019, the provider shall reimburse the department the amount of the payment.

(8)~~(a)~~ A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

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(b) In accordance with 42 C.F.R. 447.45, a claim shall be submitted to the department within twelve (12) months of the date of service.

(c)1. The department shall not reimburse for a claim submitted to the department after twelve (12) months from the date of service unless the claim is for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid.

2. The department shall reimburse for a claim for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid for up to 365 days from the date that the department issued a letter to the individual informing the individual of Medicaid eligibility.

3. The department shall not reimburse for a claim referenced in subparagraph 2. of this paragraph after 365 days have lapsed since the department issued the notice of retroactive eligibility.

(9) [A claim in which retroactive eligibility is established shall be submitted up to twelve (12) months from the issue date noted on the Medicaid recipient's medical assistance identification card. If the date of service is greater than twelve (12) months old, the claim shall be submitted as a paper claim with a copy of the retroactive medical assistance identification card attached.]

(10) Pursuant to KRS 205.622, prior to billing the department, a provider shall submit a bill to a third party payer [Medicare] if the provider has knowledge that the third party payer [Medicare] may be liable for payment.

(10)(11)(a) If a provider is aware that a Medicaid recipient has additional insurance or if a recipient's (11)(a) If the medical assistance identification card indicates that the Medicaid recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.

(b) A provider who is aware that a recipient has other insurance, but no insurance is indicated on the medical assistance identification card, shall notify the department's fiscal agent of the third-party liability.

(11)(12) Adherence to the requirements established in this section shall be monitored through an on-site audit, postpayment review of the claim, a computer audit or an edit of the claim.

(12)(13)(a) A pharmacy of a covered entity as defined in 42 U.S.C. 256b which purchases drugs through the United States Public Health Service Discount Program in accordance with 42 U.S.C. 256b shall bill the department the pharmacy's actual 340B acquisition cost for all drugs [a drug] [- and]

(b) The department shall reimburse the pharmacy's actual 340B acquisition cost for the drug plus a dispensing fee in accordance with Section 3 of this administrative regulation.

(13)(14) If a covered entity as defined in 42 U.S.C. 256b notifies the United States Office of Pharmacy Affairs that its pharmacy is not included under 42 U.S.C. 256b:

(a) The pharmacy shall submit its usual and customary amount for a drug; and

(b) The department shall reimburse for a drug in accordance with this section plus a dispensing fee in accordance with Section 3 of this administrative regulation.

Section 3. Dispensing Fees. (1) [To determine a dispensing fee, the department shall comply with KRS 205.561.

(2) Except as provided in subsection (2)(3) of this section and in accordance with KRS 205.561, the dispensing fee, unless excluded by Section 2(4)(e)2(4)(d) of this administrative regulation, shall be:

(a) Five (5) dollars per prescription for a generic drug reimbursed through the Outpatient Drug Program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022; or [and]

(b) Four (4) dollars and fifty (50) cents per prescription for a brand name drug reimbursed through the outpatient drug program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022.

(2)(3)(a) For a recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022, a unit dose addition to the usual reimbursement shall be made for a drug dispensed through the Pharmacy Outpatient

Drug Program in the amount of two (2) cents per unit dose for a nonunit dose drug repackaged in unit dose form by the pharmacist.

(b) The unit dose addition shall be paid, as appropriate, even though the usual dispensing fee of five (5) dollars for a generic drug or four (4) dollars and fifty (50) cents for a brand name drug is not paid due to monthly limits on dispensing fees or in accordance with Section 2(4)(e)2(4)(d) of this administrative regulation.

Section 4. Reimbursement to Dispensing Physicians. A participating dispensing physician who practices in a county where a pharmacy is not located shall be reimbursed for the cost of the drug, with the cost computed:

(1) As the lesser of:

(a) The maximum [-]allowable cost or estimated acquisition cost established in Section 2(4) of this administrative regulation;

(b) The physician's usual and customary amount; or

(c) The federal upper limit; or

(2) In accordance with 907 KAR 3:010 and 1:680, for a free immunization through the Vaccines for Children Program.

Section 5. Incorporation by Reference. (1) The "Kentucky Medicaid MAC Price [MAC Price Inquiries and] Research Request Form", June 18, 2010 [December 2004] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or obtained online at the Department's Web site at <http://www.chfs.ky.gov/dms>.

NEVILLE WISE, Acting Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 14, 2011

FILED WITH LRC: December 15, 2011 at 9 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Mental Health and Mental Retardation Services Division of Administration and Financial Management (As Amended at ARRS, January 9, 2012)

908 KAR 3:050. Per diem rates.

RELATES TO: KRS 210.710, 210.720, 210.730

STATUTORY AUTHORITY: KRS 194A.050 (1), 210.720(2), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) requires the Secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to implement KRS 210.710 to 210.760, the Patient Liability Act of 1978. This administrative regulation establishes the patient cost per day for board, maintenance and treatment at facilities operated by the cabinet.

Section 1. Facility Rates. (1) Facilities operated by the cabinet shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (3)(2) of this section that is provided.

(2) The per diem rate for room and board for each facility shall be as follow

| Facility | Rate |
|--------------------------------|------------------|
| Central State Hospital | \$670[\$660] |
| Central State - ICF/MR | \$1,185[\$1,025] |
| Western State Hospital | \$740[\$710] |
| Western State Nursing Facility | \$290[\$345] |
| Outwood ICF/MR | \$475[\$390] |

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| | | |
|--------------------------------|--------------|--------------------|
| Oakwood Community Center | Unit 1 | \$1,115 [\$960] |
| | Unit 2 | \$1,095 [\$940] |
| | Unit 3 | \$1,110 [\$940] |
| | Unit 4 | \$1,130 [\$985] |
| Hazelwood Center | \$730[\$780] | |
| Glasgow State Nursing Facility | \$335[\$325] | |
| Del Maria | \$595[\$640] | |
| Meadows | \$705[\$670] | |
| Windsong | \$635[\$720] | |
| Eastern State Hospital | \$495[\$440] | |
| Volta House | \$730[\$780] | |

(3)(2) A separate charge shall be imposed if the following treatment services are provided at a Department for Mental Health and Mental Retardation Services facility listed in subsection **(2)(1)** of this section:

- (a) Physician's services;
- (b) EEG;
- (c) EKG;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) X-ray;
- (g) Laboratory;
- (h) Speech therapy;
- (i) Hearing therapy;
- (j) Psychology;
- (k) Pharmacy;
- (l) Respiratory therapy;
- (m) Anesthesia;
- (n) Electroshock therapy;
- (o) Physician assistant; and
- (p) Advanced practice registered nurse.

Section 2. Board, Maintenance and Treatment Charges. Cost per day for board, maintenance, and treatment charges shall be established using the last available cost report adjusted for inflation. Current rates shall be posted at each facility.

STEPHEN HALL, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: November 14, 2011

FILED WITH LRC: November 15, 2011 at 11 a.m.

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health and Family Services, Office of the Counsel, 275, East Main Street, 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Amended After Comments)

201 KAR 30:375. Appraisal procedures for appraisal management companies. [Fees paid to appraisers.]

RELATES TO: KRS 324A.150 - **324.164, 15 U.S.C. 1639e(i), 12 C.F.R. 226.42(f)** [through 324A.164]

STATUTORY AUTHORITY: KRS 324A.152(8)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 324A.152(8)** [KRS 324A.154(2)] requires the board to establish by administrative regulation standards [rules] governing the operation of an appraisal management company. This administrative regulation establishes **appraisal procedures for appraisal management companies** [requirements for operating an appraisal management company].

Section 1. (1) A registrant shall make payment to an engaged appraiser for the completion of an appraisal within forty-five days after the date on which the appraisal is transmitted or otherwise completed.

(2) Subsequent requests by a registrant to the appraiser for additional support of valuation or correction of factual and objective data shall not extend the payment date beyond the original 45 days from first receipt of **the** appraisal.

(3) An appraiser shall comply with a registrant's request for additional data support of estimate of value or correction of factual and objective data errors within 15 days of **the** request or be subject to complaint process to the Board by the registrant.

~~(4) [(a) A registrant shall compensate a Kentucky licensed or certified appraiser at a rate that is mutually agreed to between the Appraiser and the registrant provided the fee is equal to or greater than the fee schedule of the U.S. Department of Veterans Affairs for similar properties in the same geographic areas of the Kentucky.~~

~~(b) Nothing in this subsection shall be construed to apply to any entity that is not under the board's jurisdiction under KRS 324A.164.~~

(5) An appraiser shall not be prohibited **by an appraisal management company** from including within each appraisal report the compensation received from the Appraisal Management Company for each appraisal assignment completed. [Section 2. Incorporation by Reference. (1) The U.S. Department of Veterans Affairs Fee Schedule is incorporated by reference.

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: December 20, 2012

FILED WITH LRC: January 13, 2012 at 11 a.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658; fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry Disney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum fee for that appraisal management companies shall paid when engaging appraisers. The minimum is set to be identical to the schedule already established by the Veteran's Administration of the Federal Government.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set a standard for customary and reasonable fees for appraisal services in the operation of an

appraisal management company as outlined by the Interim Final Rule of the Board of Governors of the Federal Reserve System under the Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S. C. 1639e(i).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.154(8) requires the board to establish by administrative regulation rules governing the standards of operation of an appraisal management company.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs Appraisal Management Companies of the standards for reasonable and customary fees required to be paid appraisers for services rendered. The Board is setting this standard to insure that each appraiser performs appraisal work with the proper independent judgment, and is not subject to coercion or other similar influences that could cause him to shortcut his services or otherwise subject him to misconduct.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board does not know the number of persons who will seek registration from the board at this time. Generally, states with similar characteristics to Kentucky have fifty to seventy-five registered Appraisal Management Companies.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 codifies under Kentucky law the standard for customary and reasonable fees for appraisal services in the operation of an appraisal management company as required by the Interim Final Rule of the Board of Governors of the Federal Reserve System under the Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S. C. 1639e(i). Appraisal Management Companies will then be able to demonstrate that they are clearly in compliance with the federal guidelines in their payments for services performed by an appraiser.

(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 will involve no additional costs to the Appraisal Management Companies as they are already required to pay customary and reasonable fees under the Interim Final Rule identified above.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will eliminate any uncertainty for Appraisal Management Companies regarding customary and reasonable fees to be paid to appraisers for services.

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

(a) Initially: The Kentucky Appraisal Management Company Registration Act, KRS 324A.150 through 324A.164, provides for registration of appraisal management companies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

(b) On a continuing basis: The Kentucky Appraisal Management Company Registration Act, KRS 324A.150 through 324A.164, provides for registration of appraisal management com-

panies for the first time. Although it cannot identify costs with exactitude, the board will be expending funds for overhead, staff, and equipment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees 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: No increase in fees to the Board 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 does directly establish fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What 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 Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324A.152(8); 15 U.S.C. 1639e(i); 12 C.F.R. 226.42(f).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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:

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JANUARY 15, 2012

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)**16 KAR 6:010. Examination prerequisites for teacher certification.**

RELATES TO: KRS 161.020, 161.028(1), 161.030(3), (4)

(4) STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(3),

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) requires the Education Professional Standards Board to select the appropriate assessments required prior to teacher certification. This administrative regulation establishes the examination prerequisites for teacher certification.

Section 1. A teacher applicant for certification shall successfully complete the appropriate tests identified in this administrative regulation prior to Kentucky teacher certification.

Section 2. The Education Professional Standards Board shall require the test or tests and passing scores identified in this section for each new teacher applicant and each teacher seeking an additional certificate.

(1) An applicant for Interdisciplinary Early Childhood Education certification (birth to primary) shall take "Interdisciplinary Early Childhood Education (0023)" with a passing score of 166.

(2) (a) Until August 31, 2012, an applicant for Elementary certification (grades P-5) shall take "Elementary Education: Content Knowledge (0014)" with a passing score of 148; or

(b) Beginning September 1, 2012, an applicant for Elementary certification (grades P-5) shall take "Elementary Education: Multi-Subjects Test (5031)" with the following passing scores on the corresponding test sections:

1. "Reading and Language Arts (5032)" – 165;

2. "Mathematics (5033)" – 164;

3. "Social Studies (5034)" – 155; and

4. "Science (5035)" – 159.

(3) An applicant for certification at the middle school level (grades five (5) through nine (9)) shall take the content test or tests based on the applicant's content area or areas with the corresponding passing scores as identified in this subsection:

(a) Middle School English and Communications: "Middle School English Language Arts (0049)" - 158;

(b) Middle School Mathematics: "Middle School Mathematics (0069)" - 148;

(c) Middle School Science: "Middle School Science (0439)" - 144; or

(d) Middle School Social Studies: "Middle School Social Studies (0089)" - 149.

(4) An applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take the content test or tests corresponding to the applicant's content area or areas with the passing scores identified in this subsection:

(a) Biology: "Biology: Content Knowledge (0235)" - 146;

(b) Chemistry: "Chemistry: Content Knowledge (0245)" - 147;

(c) Earth Science: "Earth and Space Sciences: Content Knowledge (0571)" - 147;

(d) English:

1. Until August 31, 2012,

a. "English Language, Literature and Composition: Content Knowledge (0041)" - 160; and

b.[2-] "English Language, Literature and Composition Essays (0042)" - 155; or

2. Beginning September 1, 2012, "English Language, Literature and Composition: Content and Analysis (0044)" – 166;

(e) Mathematics:

1. "Mathematics: Content Knowledge (0061)" - 125; and

2. "Mathematics: Proofs, Models and Problems, Part 1 (0063)"

- 141;

(f) Physics: "Physics: Content Knowledge (0265)" - 133; or

(g) Social Studies:

1. Until August 31, 2012,

a. "Social Studies: Content Knowledge (0081)" - 151; and

b.[2-] "Social Studies: Interpretation of Materials (0083)" – 159; and

2. Beginning September 1, 2012, "Social Studies: Content and Interpretation (0086)" – 153.

(5) An applicant for certification in all grades shall take the content test or tests corresponding to the applicant's area or areas of specialization identified in this subsection, and, if a passing score is established in this subsection, the applicant shall achieve the passing score or higher:

(a) Art:

1. Until August 31, 2012,

a. "Art: Content Knowledge (0133)" - 158; and

b.[2-] "Art Making (0131)" - 154; or

2. Beginning September 1, 2012, "Art: Content and Analysis (0135)" – 161;

(b) French:[1. Until August 31, 2011, "French: World Language (5174)" – no passing score; or 2. Beginning September 1, 2011,] "French: World Language (5174)" - 162;

(c) German:[1. Until August 31, 2011, "German: World Language (5183)" – no passing score; or 2. Beginning September 1, 2011,] "German: World Language (5183)" - 163;

(d) Health: "Health Education (0550)" - 630;

(e) Health and Physical Education:

1.[a. Until August 31, 2011, "Health and Physical Education: Content Knowledge (0856)" – no passing score; or b. Beginning September 1, 2011,] "Health and Physical Education: Content Knowledge (0856)" - 156; and

2. "Physical Education: Movement Forms - Analysis and Design (0092)" - 151;

(f) Integrated Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(g) Instrumental Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(h) Vocal Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(i) Latin: "Latin (0600)" - 700;

(j) Physical Education:

1.a. Until August 31, 2012, "Physical Education: Content Knowledge (0091)" - 147; and

b. "Physical Education: Movement Forms-Analysis and Design (0092)" - 151; or

2. Beginning September 1, 2011, "Physical Education: Content and Design (0095)" - 169;

(k) School Media Librarian: "Library Media Specialist (0311)" - 156;

(l) School Psychologist: "School Psychologist (0401)" - 161; or

(m) Spanish:[1. Until August 31, 2011, "Spanish: World Language (5195)" – no passing score; or 2. Beginning September 1, 2011,] "Spanish: World Language (5195)" - 168.

(6) Except as provided in subsection (7) of this section, an applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) Communication Disorders:

1.a. Until August 31, 2012, "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; or

b. Beginning September 1, 2011, "Special Education: Core Content Knowledge and Applications (0354)" - 151; and

2. "Speech-Language Pathology (0330)" - 600;

(b) Hearing Impaired:
 1.a. Until August 31, 2012, "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; or
 b. Beginning September 1, 2011, "Special Education: Core Knowledge and Applications (0354)" - 151;
 2. "Education of Deaf and Hard of Hearing Students (0271)" - 167;
 (c) Hearing Impaired With Sign Proficiency:
 1.a. Until August 31, 2012, "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; or
 b. Beginning September 1, 2011, "Special Education: Core Knowledge and Applications (0354)" - 151;
 2. "Education of Deaf and Hard of Hearing Students (0271)" - 167; and
 3. One (1) of the following tests with a passing score of Intermediate Level:
 a. "Sign Communication Proficiency Interview (SCPI)"; or
 b. "Educational Sign Skills Evaluation (ESSE)";
 (d) Learning and Behavior Disorders:
 1. Until August 31, 2012:
 a. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and
 b. "Education of Exceptional Students: Mild to Moderate Disabilities (0542)" - 172; or
 2. Beginning September 1, 2011, "Special Education: Core Knowledge and Mild to Moderate Applications (0543)" - 158;
 (e) Moderate and Severe Disabilities:
 1. Until August 31, 2012:
 a. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and
 b. "Education of Exceptional Students: Severe to Profound Disabilities (0544)" - 156; or
 2. Beginning September 1, 2011, "Special Education: Core Knowledge of Mild to Moderate Applications (0543)" - 158; or
 (f) Visually Impaired:
 1.a. Until August 31, 2012, "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; or
 b. Beginning September 1, 2011, "Special Education: Core Knowledge and Applications (0354)" - 151; and
 2. "Teaching Students with Visual Impairments (0281)" - 161.
 (7) A holder of an exceptional child certificate in Learning and Behavior Disorders or Moderate and Severe Disabilities who is seeking additional certification for any exceptional children teaching certificate listed in subsection (6) of this section shall not be required to take "Education of Exceptional Students: Core Content Knowledge (0353)" or "Special Education: Core Knowledge and Applications (0354)".
 (8)(a) Except as provided in paragraph (b) of this subsection, an applicant for Career and Technical Education certification to teach in grades five (5) - twelve (12) shall take the content test or tests corresponding to the applicant's area or areas of specialization identified in this paragraph, and, if a passing score is established in this paragraph, the applicant shall achieve the passing score or higher:
 1. Agriculture: "Agriculture (0700)" - 520;
 2. Business and Marketing Education: ~~[a. Until August 31, 2011, "Business Education (0101)" - no passing score; or b. Beginning September 1, 2011, "Business Education (0101)" - 154;~~
 3. Family and Consumer Science: "Family and Consumer Sciences (0121)" - 162; or
 4. Engineering and Technology Education:
 a. ~~Until August 31, 2012, "Technology Education (0050)" - 600; or~~
 b. Beginning September 1, 2012, "Technology Education (0051)" - 159.
 (b) An applicant for Industrial Education shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in 16 KAR 6:020.
 (9) An applicant for a restricted base certificate in the following area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:
 (a) English as a Second Language: "English to Speakers of Other Languages (0361)" - 157;

(b) Speech/Media Communications: "Speech Communication (0221)" - 146; or
 (c) Theater: "Theatre (0640)" - 630.
 (10) An applicant for an endorsement in the following content area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the passing scores identified in this subsection:
 (a) American Sign Language: "American Sign Language Proficiency Interview (ASLPI) administered by the Galludet University - 3+;
 (b) English as a Second Language: "English to Speakers of Other Languages (0361)" - 157;
 (c) ~~[(b)]~~ Learning and Behavior Disorders, grades 8 - 12:
 1. Until August 31, 2012, "Education of Exceptional Students: Mild to Moderate Disabilities (0542)" - 172; or
 2. Beginning September 1, 2011, "Special Education: Core Knowledge and Mild to Moderate Applications (0543)" - 158;
 (d) ~~[(e)]~~ 1. Until August 31, 2012, Literacy Specialist: "Reading Specialist (0300)" - 520; or
 2. Beginning September 1, 2012, "Reading Specialist (0301)" - 164;
 (e) ~~[(d)]~~ Gifted Education, grades primary - 12: "Gifted Education (0357)" - 152; or
 (f) ~~[(e)]~~ Reading Primary through Grade 12: [1. Until August 31, 2011, "Teaching Reading (0204)" - no passing score; or
 2. Beginning September 1, 2011, "Teaching Reading (0204)" - 153.

Section 3. In addition to the content area test or tests established in Section 2 of this administrative regulation, each new teacher shall take the pedagogy test and meet the passing score identified in this section that corresponds to the grade level of certification sought. If a certified teacher is seeking additional certification in any area, the applicant shall not be required to take an additional pedagogy test. (1)(a) Until August 31, 2012, an applicant for Elementary certification (grades primary - 5) shall take "Principles of Learning and Teaching: Grades Kindergarten - 6 (0522)", with a passing score of 161; or

(b) Beginning September 1, 2012, an applicant for Elementary certification (grades primary - 5) shall take "Principles of Learning and Teaching: Grades kindergarten - six (6) (0622)" with a passing score of 160.

(2)(a) Until August 31, 2012, an applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades 5 - 9 (0523)", with a passing score of 161; and

(b) Beginning September 1, 2012, an applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades 5 - 9 (0623)", with a passing score of 160.

(3)(a) Until August 31, 2012, an applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161; or

(b) Beginning September 1, 2012, an applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0624)", with a passing score of 160.

(4) An applicant for certification in all grades with a content area identified in Section 2(5) of this administrative regulation shall take either:

(a) 1. Until August 31, 2012, "Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)", with a passing score of 161; or

2. Beginning September 1, 2012, an applicant for Elementary certification (grades primary - 5) shall take "Principles of Learning and Teaching: Grades kindergarten - six (6) (0622)" with a passing score of 160;

(b) 1. Until August 31, 2012, "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)", with a passing score of 161; or

2. Beginning September 1, 2012, an applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades 5 - 9 (0623)", with a passing score of 160; or

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(c)1. Until August 31, 2012, "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161; or

2. Beginning September 1, 2012, an applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0624)", with a passing score of 160.

(5) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy test established in this section. The content area test or tests established in Section 2 of this administrative regulation shall fulfill the pedagogy test requirement for a teacher of exceptional children.

(6) An applicant for Career and Technical Education certification in grades five (5) through twelve (12) shall take either:

(a)1. Until August 31, 2012, ["Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)", with a passing score of 161; or

2. Beginning September 1, 2012, an applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades 5 - 9 (0623)", with a passing score of 160; or

(b)1. Until August 31, 2012, ["Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161; or

2. Beginning September 1, 2012, an applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0624)", with a passing score of 160.

(7) An applicant for a restricted base certificate shall take one (1) of the following pedagogy tests corresponding to the grade range of the specific restricted base certificate:

(a)1. Until August 31, 2012, ["Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)", with a passing score of 161; or

2. Beginning September 1, 2012, an applicant for Elementary certification (grades primary - 5) shall take "Principles of Learning and Teaching: Grades kindergarten - six (6) (0622)" with a passing score of 160;

(b)1. Until August 31, 2012, ["Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)", with a passing score of 161; or

2. Beginning September 1, 2012, an applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades 5 - 9 (0623)", with a passing score of 160; or

(c)1. Until August 31, 2012, ["Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161; or

2. Beginning September 1, 2012, an applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0624)", with a passing score of 160.

Section 4. Assessment Recency. (1) A passing score on a test established at the time of administration shall be valid for the purpose of applying for certification for five (5) years from the test administration date.

(2) A teacher who fails to complete application for certification to the Education Professional Standards Board within the applicable recency period of the test and with the passing score established at the time of administration shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(3) The test administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5. (1) An applicant for initial certification shall take the assessments on a date established by:

(a) The Educational Testing Service; or

(b) The agency established by the Education Professional Standards Board as the authorized test administrator.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the Kentucky Education Professional Standards Board

and to the appropriate teacher preparation institution where the applicant received the relevant training.

(3)(a) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration.

(b) An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 6. An applicant shall pay the appropriate examination fee established by the Educational Testing Service or other authorized test administrator for each relevant test required to be taken.

Section 7. An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake the test or tests during one (1) of the scheduled test administrations.

Section 8. The Education Professional Standards Board shall collect data and conduct analyses of the scores and institutional reports provided by the Educational Testing Service or other authorized test administrator to determine the impact of these tests.

CATHY GUNN, Chairperson

APPROVED BY AGENCY: January 10, 2012

FILED WITH LRC: January 12, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 29, 2012 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 29, 2012. 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the written examination prerequisites and the corresponding passing scores for teacher certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to teacher candidates of the assessment requirements for obtaining and maintaining a teaching certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 places the responsibility of selecting the assessments and determining the minimum acceptable level of achievement on each assessment on the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the required teacher certification assess-

ments and their corresponding minimum acceptable scores.

(2) If 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 the Elementary Education: Content Knowledge (0014) assessment, which requires a passing score of 128, with the Elementary Education: Multi-Subjects Test (5031), which requires individual passing scores of 165 for Reading/Language Arts, 164 for Mathematics, 155 for Social Studies, and 159 for Science. This amendment also replaces currently required tests in English, Social Studies, and Art with the following newly developed assessments: English Language, Literature and Composition: Content and Analysis (0044), which requires a passing score of 166; Social Studies: Content and Interpretation (0086), which requires a passing score of 153; and, Art: Content and Analysis (0135), which requires a passing score of 161. Further, this amendment creates a new endorsement for American Sign Language and adopts updated assessments for Technology Education (0051), which requires a passing score of 159, and Reading Specialist (0301), which requires a passing score of 164. In addition, this amendment replaces the Principles of Learning and Teaching tests with revised versions of Principles of Learning and Teaching: Grades Kindergarten - 6 (0622), Principles of Learning and Teaching: Grades 5 - 9 (0623), and Principles of Learning and Teaching: Grades 7 - 12 (0624) and reduces the required passing score for each test from 161 to 160. Any other changes are to clarify the regulation in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the required assessments and corresponding scores are adequately set to produce the most competent educators.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the required assessments and corresponding passing scores for Kentucky teacher certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment more closely aligns assessment options with teacher preparation program requirements and opportunities within an actual school setting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts, 30 educator preparation programs, and educators seeking new and additional teacher certification.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 school districts will not be required to take any additional action. The educator preparation programs will need to continue to direct students to the Education Professional Standards Board website for current assessment requirements. Applicants will need to continue to refer to the Education Professional Standards board website for current assessment requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by the clarifications to the regulation. The districts will be positively affected by a supply of teachers who are competent in their content area.

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

(a) Initially: None

(b) On a continuing basis: None

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding 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 does not establish any fees, or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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, regional universities, and the Education Professional Standards Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1) and KRS 161.030

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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? There should be no revenue generated.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a revenue costing regulation, but merely establishes the testing requirements for teacher candidates to obtain certification.

OFFICE OF THE GOVERNOR Kentucky Department of Veterans' Affairs (Amendment)

17 KAR 3:020. Maximum charge for room and care at state veterans' nursing homes.

RELATES TO: KRS 40.320, 40.325

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 care at state veterans' nursing homes.

Section 1. Definitions. (1) "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~~[\$3,500] 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.

KENNETH R. LUCAS, Commissioner

APPROVED BY AGENCY: January 11, 2012

FILED WITH LRC: January 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on February 22, 2012, at 8:30 a.m., at Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 29, 2012. 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: Gilda Hill, Executive Director, Office of Kentucky Veterans Centers, Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9281, fax (502) 564-4036.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gilda Hill

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the maximum monthly charge for room and care services at state veterans' nursing homes. This maximum

charge will be applied uniformly in determining a veteran's ability to pay for nursing home care in accordance with 17 KAR 3:010.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to ensure that facilities operated by the department maintain the financial ability to care for veterans requiring long term, nursing care services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 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 charge for room and care services within the state veterans' nursing homes.

(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 a standardized monthly resident charge throughout the state veterans' nursing homes.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the maximum monthly charge to residents from \$3500 to \$3700.

(b) The necessity of the amendment to this administrative regulation: It is a regulatory requirement to amend this regulation any time the maximum amount charged is changed. The substantive reason for this change relates to this agency's current budget and the need to increase the monthly charge in order to ensure skilled nursing care services may be properly funded.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with the letter of 17 KAR 3:020, requiring an amendment for any change in the monthly rate, and with KRS 40.325(2) which 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 charge for room and care services within the state veterans' nursing homes and the amendment legally increases the maximum charge.

(d) How the amendment will assist in the effective administration of the statutes: This amendment implements the mission of the Kentucky Department of Veterans Affairs as that mission relates to the operation of state veterans' nursing homes, establishing a uniform maximum charge for residents.

(3) List the type and number of individuals, businesses, organizations or state and local government affected by this administrative regulation: There are three state-operated facilities affected by this administrative regulation. This administrative regulation primarily affects the 125 veteran residents of department facilities who have the resources to pay the maximum charge for their 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: No action will be required on the part of our veteran residents. Staff members of the three state veterans' nursing homes will be required to update literature and computer systems to reflect the \$3,700 per month maximum monthly charge established by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs of complying with this administrative regulation will be an additional \$200 per month for the 125 residents who pay the current maximum charge of \$3,500 per month.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will ensure that state operated facilities have sufficient revenues to maintain the high quality of care that is currently provided to all residents regardless of income.

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

(a) Initially: Minimal

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds. The facilities operated by the department will be required to change the charge rates in their billing and record keeping systems.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: This administrative regulation increases the maximum charge rate for the three state veterans' nursing homes. This increase is necessary in order to continue the provision of long term nursing home care at current levels. No increase in funding will be required to implement this administrative regulation because functions of billing and financial recording keeping for state-operated facilities are already in place.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees by codifying the existing departmental policy for determining the maximum monthly room and care charge for the state veterans' nursing homes. Fees are increased by \$200 per month for the 125 residents who pay the current maximum charge of \$3,700 per month.

(9) TIERING: Is tiering applied? No tiering was applied in this administrative regulation, as the maximum monthly charge at the three state veterans' nursing homes is applied uniformly to all veterans in determining their ability to pay for nursing home care in accordance with 17 KAR 3:010.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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 Veterans Affairs

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 40.325(2).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? \$150,000

(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? \$300,000

(c) How much will it cost to administer this program for the first year? The administrative body through compliance with this administrative regulation incurs no new costs.

(d) How much will it cost to administer this program for subsequent years? The administrative body through compliance with this administrative regulation incurs no new 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:

PERSONNEL CABINET (Amendment)

101 KAR 2:180. Employee performance evaluation system.

RELATES TO: KRS 18A.110

STATUTORY AUTHORITY: KRS 18A.110(1)(i), (7)(j)

NECESSITY, FUNCTION and CONFORMITY: KRS 18A.110(1)(i) and (7)(j) requires the Secretary of the Personnel Cabinet to promulgate comprehensive administrative regulations

for classified service employees to establish a uniform system of annual employee evaluations for classified employees. This administrative regulation establishes the uniform employee performance evaluation system.

Section 1. General Provisions. (1) ~~Except as provided in paragraph (b) of this subsection, the~~ The annual performance period shall be one (1) calendar year beginning on January 1.

~~[(b) For calendar year 2001, the annual performance period shall be the effective date of this administrative regulation until the end of the calendar year.]~~

(2) Except as provided in subsection (4)(d) of this section, performance evaluations shall be completed no later than thirty (30) calendar days after the end of the annual performance period.

(3) All agencies shall use the Annual Employee Performance Evaluation form.

(4)(a) Except as provided in paragraph (b) or (c) of this subsection, the first line supervisor of an employee at the time the evaluation is due shall be the evaluator.

(b) If the first line supervisor has not supervised the employee for at least sixty (60)[ninety (90)] calendar days during the performance year, the next line supervisor who meets the sixty (60)[ninety (90)] day requirement shall be the evaluator.

(c) If an employee changes jobs or reports to a different supervisor on or before November 1 of the performance year, the agency shall transfer all performance evaluation documentation for the performance year to the new evaluator for incorporation in the annual evaluation.

(d) If an employee changes jobs or reports to a different supervisor after November 1 ~~[October 1]~~ of the performance year, the annual evaluation shall be completed by the former supervisor prior to the job change.

(5)(a) Except as provided in paragraph (b) of this subsection, the evaluator ~~The first line supervisor (evaluator)~~ shall establish a performance plan for each eligible employee no later than thirty (30) calendar days after the start of the performance period.

(b) If an employee's position or job title changes during the performance year, the evaluator shall establish a new performance plan no later than thirty (30) calendar days after the start of the position or job title change. The new performance plan shall become a part of the original performance year evaluation documentation.

(6) The evaluator shall meet with the employee when completing the performance plan to discuss job duties and expectations.

(7) Performance evaluations shall be in writing. The evaluator shall:

(a) Present and explain all documentation relevant to an employee's performance evaluation;

(b) Discuss both the positive and negative aspects of performance with the employee at the annual evaluation;

(c) Elicit the employee's opinions and concerns; and

(d) Discuss measures to improve or enhance performance with the employee.

(8) The Personnel Cabinet ~~Governmental Services Center~~ or agency personnel shall provide supervisor evaluation training on the performance evaluation system.

(a) The appointing authority shall require that supervisor evaluation training is completed prior to completing performance planning, interim reviews, and annual evaluations ~~[evaluation]~~ of employees.

(b) The Personnel Cabinet shall monitor and validate compliance with supervisor evaluation training requirements.

(9) An employee ~~Employees~~ shall complete orientation to the performance evaluation system prior to January 1 of the employee's initial performance evaluation period ~~[no later than thirty (30) calendar days after completion of initial probation]~~.

(10) Except as authorized by the appointing authority, an evaluator shall complete required performance planning, interim reviews, and annual evaluations for each eligible employee. If the appointing authority approves the exception, written justification for the decision shall be placed in the employee's personnel file.

Section 2. Employee Eligibility. Performance evaluations shall be completed for all full-time classified employees with status at

the beginning of the performance year who have remained in continuous merit status throughout the performance year.

Section 3. Performance Planning. (1) The performance plan shall specify job responsibilities and expectations in the four (4) categories established in this subsection.~~[following categories:]~~

(a) Job tasks.

1. The job tasks category shall identify specific duties and expectations of the position held by the employee.

2. The employee's job duties shall be consistent with the position description.

3. Duties and expectations shall be in writing.

4. The evaluator shall assign points to identified duties and expectations~~[, weighted by importance]~~.

(b) Adaptability/initiative.

1. The adaptability/initiative category shall identify job requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points weighted by importance.

(c) Communication/teamwork.

1. The communication/teamwork category shall identify requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points weighted by importance.

(d) Self-management.

1. The self-management category shall identify requirements of the agency relating to workplace standards that shall include:

- a. Attendance;
- b. Punctuality;
- c. Career development;
- d. Responsibility; and
- e. Dependability.

2. The evaluator shall place each requirement under this category in writing and assign points weighted by importance.

3.~~[Performance goals and objectives shall relate to the agency's mission.][4.]~~ The evaluator shall develop the performance plan after consultation with the employee.

a. The employee and evaluator shall certify in writing in the performance planning section of the evaluation form that the employee has met with the evaluator and is aware of the performance plan ~~[at the start of the evaluation period]~~.

b. The next line supervisor shall certify that he or she has reviewed the duties and expectations of the employee and finds them to be reasonable and appropriate based upon the employee's classification~~[equitable considering duties of other employees in the same classification]~~.

(2) Total points assigned for all four (4) categories shall equal 100 total points. The evaluator shall distribute points among the four (4) categories as follows:

(a) The job tasks category shall have a minimum of fifty (50) points designated; and

(b) The other three (3) categories shall have a minimum of five (5) points designated to each category.

(3) To obtain the point total for each category, points assigned to each job duty within each category shall be multiplied by the numerical rating~~[one (one (1) to five (5))]~~ provided[determined] by the evaluator, as described in Section 5(3) of this administrative regulation~~[to complete the final point total for each category]~~.

(4) Total points in all four (4) categories shall be added to obtain a final performance evaluation score.

Section 4. Performance Coaching and Feedback. (1) Modification of the performance plan may occur during the performance evaluation period if the changes are consistent with the duties reflected on an employee's position description.

(a) The employee shall be given written notice of changes to the performance plan.

(b) Changes to the performance plan shall be indicated on the evaluation form or on a supplemental sheet attached to the form.

(c) Changes to the performance plan shall be initialed and dated by the evaluator and the employee when changes become effective.

(2) Three (3)~~[Two (2)]~~ interim reviews shall be required during a performance year.

(a) The evaluator shall document the interim reviews.

1. Interim reviews shall not contain a rating.

2. The interim meeting section of the evaluation form shall contain comments by the evaluator for each category established in Section 3(1) of this administrative regulation.

(b) The employee and evaluator shall sign the performance evaluation form to certify that the interim reviews occurred.

(c) For consideration in the annual year evaluation, the employee may attach pertinent comments relating to the interim review within five (5) working days of the interim review meeting.

(d) Except as requested by the appointing authority and authorized by the Secretary of Personnel, the evaluator shall schedule interim reviews to discuss performance January 1 through April 30, May 1 through August 31, and September 1 through December 31~~[during the months of April and August of each performance year]~~.

(e) Interim reviews shall be completed no later than thirty (30) calendar days after the end of each interim review period.

(f)~~[(d)]~~ Interim reviews shall document performance to justify the annual performance rating.

Section 5. Performance Evaluations and Ratings. (1) Except as provided in Section 1(4)(d) of this administrative regulation, ~~the~~The evaluator and the employee shall meet no later than thirty (30) calendar days after the performance period ends to discuss the performance ratings.

(2) Eligible employees shall be evaluated in the four (4) categories described in Section 3 of this administrative regulation.

(3) All job duties identified within the categories shall be rated on a scale of one (1) to five (5), with five (5) representing superior performance.

(4) The final performance evaluation shall consist of a defined numerical rating. Point values for the overall performance rating ~~shall be~~are:

- (a) Outstanding: 450 to 500 points;
- (b) Highly effective: 350 to 449 points;
- (c) Good: 250 to 349 points;
- (d) Needs Improvement: 150 to 249 points; or
- (e) Unacceptable: less than 150 points.

(5) Unresolved disagreements on ratings or any aspect of the performance evaluation shall be reviewed through the reconsideration process established in Section 7 of this administrative regulation.

(6) Signatures of the evaluator, employee and next line supervisor shall be required on the final evaluation.

(a) The next line supervisor shall sign the evaluation after it is completed, signed, and dated by the evaluator and the employee.

(b) For the purpose of evaluating or managing the performance of the evaluator, the next line supervisor's signature shall certify that he or she is aware of the evaluation and has reviewed it.

(c) Exceptions to this requirement may be requested by the appointing authority and shall be subject to the approval of the Secretary of Personnel.

Section 6. Performance Incentives.~~[Employee]~~ Annual leave shall be awarded as a performance incentive at the following rates:

(1) Two (2) workdays, not to exceed sixteen (16) hours, for an "Outstanding" rating; or ~~[-]~~

(2) One (1) workday, not to exceed eight (8) hours, for a "Highly Effective" rating.

Section 7. Reconsideration and Appeal Process. (1) Within five (5) working days of a performance evaluation, an employee may request initial reconsideration of the performance evaluation by the evaluator.

(2) Within five (5) working days of the receipt of the request for reconsideration, the evaluator shall respond to the request in writing.

(3) If the employee refuses to sign the form in the employee response section, the evaluation shall not be eligible for reconsideration.

(4) Within five (5) working days after the initial reconsideration by the evaluator, an employee may submit a written request for reconsideration of the evaluation by the next line supervisor. If

neither the evaluator nor the next line supervisor ~~re-
sponds[respond]~~ to the request for reconsideration in the designated time period, the employee may submit a written request to the appointing authority for response to the request for reconsideration and compliance with this administrative regulation.

(5) The next line supervisor shall:

(a) Obtain written statements from both the employee and the evaluator; or

(b) Meet individually with the employee and the evaluator.

(6) The next line supervisor shall inform both the employee and evaluator in writing of the decision no later than fifteen (15) working days after receipt of the employee's request.

(7) Within sixty (60) ~~calendar~~ days after an employee has received the written decision from the next line supervisor, the employee who has complied with this administrative regulation may appeal a final evaluation which has an overall rating in either of the two (2) lowest overall ratings to the Personnel Board.

Section 8. Evaluation-based Agency Action. If an employee receives an overall rating of unacceptable, the agency shall:

(1) Demote the employee to a position commensurate with the employee's skills and abilities; or

(2) Terminate the employee.

Section 9. Incorporation by Reference. (1) The "Annual Employee Performance Evaluation"~~[Form]~~, November 2011~~[04/04/04]~~, is incorporated by reference.

(2) This material may be inspected, ~~copied~~~~[copies]~~, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, Third Floor~~[200 Fair Oaks Lane, 5th Floor]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2012 at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 29, 2012. 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: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: December 29, 2011

FILED WITH LRC: January 3, 2012 at 10 a.m.

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the uniform employee performance evaluation system.

(b) The necessity of this administrative regulation: This regulation is necessary to establish a uniform system of annual employee evaluations for classified employees, and fulfills the secretary's statutory requirements to promulgate comprehensive regulations regarding the evaluation system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to

promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A, and this regulation is required pursuant to KRS 18A.110(1)(i) and (7)(j).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently establishes the uniform employee performance evaluation system.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments to the existing regulation will accomplish the following:

Create a third interim review period, to appropriately capture the performance and conduct during the months of October – December;

Provide that if an employee transfers after November 1st in a calendar year, the current evaluator will complete the annual evaluation – the current language utilizes October 1st;

Require a new performance plan must be completed for all employees within 30 days of starting a new position;

Recognize the requirement to complete supervisor training before that individual creates any performance plans or conducts evaluations;

Clarify that the evaluation system is no longer housed within the Governmental Services Center (GSC);

Clarify what should be considered before an employee's duties are established, including the employee's position description; and

Provide updated information to the Annual Performance Evaluation form, including the third interim evaluation period, clarification to the scoring areas, clarification to the signature pages, clarification for employee comments, and use of terminology utilized within the new HR system; and

Remedy technical or drafting within the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to ensure the performance evaluation system is appropriately utilized and serves its intended purpose. Additionally, the amendments incorporate the updated Annual Employee Performance Evaluation form.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030, 18A110(1)(i) and (7)(j), as well as KRS 13A.2251.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the administration of the statutorily required performance evaluation system. The additional interim period provides a more effective way of capturing and addressing employee work performance, and the amendments to the form assist in the effective completion and review of employee evaluations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A employees, supervisors, and executive branch agencies are required to comply 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: The Personnel Cabinet is responsible for equipping all executive branch agencies with the revised Annual Performance Evaluation form, and providing additional training as necessary. The only additional action required by each regulated entity is the documentation of performance during the last four (4) months each calendar year.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional benefits include the increased guidance and direction regarding how performance may effectively be evaluated.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

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

This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030, 18A110(1)(i) and (7)(j), and KRS 13A.2251.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no additional estimated 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:

GENERAL GOVERNMENT CABINET Kentucky State Board of Accountancy (Amendment)

201 KAR 1:081. Initial f[F]irm license, renewal, and reinstatement.

RELATES TO: KRS 325.220, 325.301, 325.380.

STATUTORY AUTHORITY: KRS 325.240, 325.301.

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 325.220 defines peer review.] KRS 325.301 establishes the standards for the initial issuance and renewal of a license for licensure of a certified public accounting firm. [KRS 325.380 establishes the standards for certified public accounting firm names and usage.] This administrative regulation establishes the procedures for firms to obtain

and renew a license to practice as required by KRS 325.301.

Section 1. Definitions. (1) A "certified public accountant owner" means a certified public accountant with a current and active license to practice issued by a state board of accountancy and is operating a public accounting firm as a:

(a) Shareholder in a professional service corporation or corporation;

(b)[a] Partner in a partnership or registered limited liability partnership;[or]

(c)[a] Member of a limited liability company; or

(d) Sole proprietor, beginning August 1, 2012.

(2) A "nonlicensed owner of the firm" means a person referred to in KRS 325.301(3)(b).

(3) "Firm" means the business entities defined in KRS 325.220(6).

(4) "Firm manager" means a CPA as defined in KRS 325.220(7).

Section 2. [In order] T[t]o obtain an initial license to practice, the [a] firm manager [except a firm operating as a sole proprietorship,] shall submit:

(1) A completed "Initial Firm License[Registration]" form; and

(2) A check or money order made payable to the "Kentucky State Board of Accountancy" in the amount of \$100 [for the initial firm registration fee].

Section 3. Effective August 1, 2012 sole proprietors shall obtain a public accounting firm license according to the procedures contained in Section 2 of this administrative regulation.

Section 4[3]. A certified public accountant shall:

(1) Have ultimate responsibility for all services provided by the firm;

(2) Have ultimate authority over any unit, division, or branch of the firm that performs attest services; and

(3) Comply with the "Statement on Quality Control Standards", June 2000, issued by the American Institute of Certified Public Accountants Auditing Standards Board, as incorporated by reference.

Section 5[4]. A nonlicensed owner of the firm shall not sell or otherwise transfer any ownership interest in the firm to any person who fails to satisfy the requirements of KRS 325.301(3).

Section 6[5]. Renewal of a Firm License. (1)Except as provided in Subsection 2 of this Section, a firm manager shall renew a firm license by:

(a) Using the online "Firm License Renewal System" offered by the board at www.cpa.ky.gov; and

(b) Paying a renewal fee in the amount of \$100.[(1) A certified public accountant seeking to engage in a regulated activity as a sole proprietor shall register the firm by writing a letter to the board stating the firm office address, phone number, and indicating whether he is engaging in a regulated activity on a full-time or part-time basis; or]

(2) If a firm manager is unable to use the online procedure, he or she shall:

(a) Submit a written request to obtain a paper copy of the Firm License Renewal form to the Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202;

(b) Complete and submit the form to the board; and

(c) Submit a check or money order made payable to the Kentucky State Board of Accountancy in the amount of \$100.

(3) Effective August 1, 2012 sole proprietors shall renew their firm license according to the procedures contained in Section 6 of this administrative regulation.[If he is establishing the firm within thirty (30) days of his individual permit renewal date, he may submit this information when he renews his individual permit to practice.

(3) A fee shall not be assessed for this registration.

Section 6. In May of the firm's renewal year, the board shall send the firm a computer generated notice containing current firm

registration information. The firm CPA manager shall renew the firm license to practice by submitting:

- (1) The notice with corrections, deletions, or additions as appropriate; and
- (2) A check made payable to the "Kentucky State Board of Accountancy" in the amount of \$100 for the firm license.
- (3) A sole proprietor shall renew his license by providing the information required in Section 3(1) of this administrative regulation when he renews his individual license. A fee shall not be charged for this firm license renewal.]
- (4) Failure to receive a notice to renew shall not constitute an adequate excuse for failing to renew the firm license.

Section 7. (1) A firm manager who fails to renew the firm license by the August 1 deadline shall renew the license on or before September 1 by:

(a) Utilizing the online "Firm License Renewal System" offered by the board at www.cpa.ky.gov;

(b) Paying the one hundred dollar (\$100) renewal fee; and

(c) Paying a one hundred (\$100) dollar late fee.

(2) A firm manager shall correct any outdated or inaccurate[ff any of the] information listed on the "Firm License Renewal System" except for a change in the name of the firm.[firm registration form submitted by the firm's certified public accountant manager changes, he shall indicate the changes on the "Firm Registration Changes" form].

Section 8. (1) A firm license that expired on July 1, 2011 shall be renewed by the firm manager: utilizing the process described in Section 6 of this administrative regulation.

Section 9. A firm is prohibited from operating and holding out as a CPA firm if the firm license is expired for a period of more than one (1) month.

Section 10. Changes in Firm information. A firm manager shall notify the board within (30) thirty days of any changes to the licensing information on file with the board by submitting a "Firm Changes" form.

Section 11.[8](1) Upon the death or retirement of a firm member which is composed of only two (2) certified public accountant owners, the board shall authorize the continuation of the use of the firm name by the surviving certified public accountant owner for a period of time not to exceed two (2) years from the date of the certified public accountant owner's death or retirement.

(2) The remaining certified public accountant owner shall advise the board in writing of this change within thirty (30) days of its occurrence.

Section 12[9]. The firm name registered with the board shall be the firm name used in all circumstances.

Section 13.[40:](1) The following material is incorporated by reference:

(a) "Instate Initial Firm License Application[Registration] (2012)[(2000)]";

(b) "Firm[Registration] Change Form (2012)[(2000)]";

(c) "Firm Online License Renewal Process", (2012);

(d) "Firm License Renewal", (2012); and

(e)[e] "Statement on Quality Control Standards, January (2000)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, between 8 a.m. and 4:30 p.m.

JOSEPH HANCOCK, CPA, President

APPROVED BY AGENCY: January 11, 2012

FILED WITH LRC: January 13, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on February 21, 2012 at 10 a.m., EST at the administrative offices of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky

40202. Individuals interested in being heard at this hearing shall notify this agency in writing by, five work days prior to the meeting, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 29, 2012. 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: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes the procedures to be followed to obtain, renew and reinstate a CPA firm license.

(b) The necessity of this administrative regulation: To insure that CPAs are aware of the procedures to obtain, renew, and request reinstatement of a CPA firm license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.301 describes the license renewal and reinstatement process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By having CPAs be aware of the process to obtain, renew, and reinstate a CPA firm license.

(2) If 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 CPA firm license renewal date is being changed from July 1 to August 1 to reflect a statutory change made in the 2011 General Assembly. Also CPA firm licenses will be able to be renewed online.

(b) The necessity of the amendment to this administrative regulation: To reflect the new license expiration date that was changed by legislation in the 2011 General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: Incorporates the new license expiration date.

(d) How the amendment will assist in the effective administration of the statutes: Incorporates the proper license expiration date.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 700 CPA firms.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 license expiration date is changed from July 1 to August 1.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The current \$100 renewal fee. A license may also be renewed for a period of one month after it expires by paying the renewal fee and a \$100 late fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The license renewal date is moved back one month. Firms will be able to renew their licenses online.

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

(a) Initially: It is anticipated that the credit card companies and Kentucky.gov will charge \$2-\$4 per renewal. These fees will be

paid for by the Board to encourage CPA firms to renew their license online.

(b) On a continuing basis: The same fees will be charged by the credit card companies and Kentucky.gov.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board operates solely on the funds contained its trust and agency account.

(7) Provide an assessment of whether an 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 is necessary. The Board is paying out of its funds the costs associated with implementing this change in the renewal process.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The previous license renewal fee amount was maintained. However now CPA firms, just like CPAs, will be required to pay a \$100 penalty if the license is renewed during the 1 month period after the expiration of the license. Also sole practitioners will be required to obtain a firm license.

(9) TIERING: Is tiering applied? Tiering is not applied since CPAs may still choose to renew with a paper application.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State Board of Accountancy

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.301

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Approximately \$2100.

(d) How much will it cost to administer this program for subsequent years? Approximately the same amount as listed above.

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 regulation is to reflect the changes in the law made during the 2011 session.

GENERAL GOVERNMENT Board of Physical Therapy (Amendment)

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

RELATES TO: KRS 327.040, 327.070

STATUTORY AUTHORITY: KRS 327.040(11), (12), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040 (12) and (13) authorize the Board of Physical Therapy to establish by administrative regulation a code of ethical standards and standards of practice for physical therapists and physical therapist assistants. This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS

327.070.

Section 1. Code of Ethical Standards. (1) Physical therapists and physical therapist assistants shall:

(a) Respect the rights and dignity of all patients;

(b) Practice within the scope of the credential holder's training, expertise and experience;

(c) Report to the board any reasonably suspected violation of KRS Chapter 327 or 201 KAR Chapter 22 by another credential holder or applicant within thirty (30) days; and

(d) Report to the board any civil judgment, settlement, or civil claim involving the credential holder's practice of physical therapy made against the credential holder relating to the credential holder's own physical therapy practice within thirty (30) days.

(2) Physical therapists and physical therapist assistants shall not:

(a) Verbally or physically abuse a client; or

(b) Continue physical therapy services beyond the point of reasonable benefit to the patient, unless the patient consents in writing.

Section 2. Standards of Practice for the Physical Therapist. While engaged in the practice of physical therapy, a physical therapist shall:

(1) Perform screenings in order to:

(a) Provide information on a person's health status relating to physical therapy;

(b) Determine the need for physical therapy evaluation and treatment;

(c) Make a recommendation regarding a person's ability to return to work or physical activity; and

(d) Provide physical therapy services;

(2) Evaluate each patient prior to initiation of treatment;

(3) Upon receipt of a patient under an active plan of care from another physical therapy service, the receiving physical therapist shall:

(a) Complete an initial evaluation in compliance with Sections 2(2) and 5(1)(a)-(e) in this administrative regulation; or

(b) Ensure the evaluation and plan of care from the other physical therapy service are current and appropriate; and document this in the medical record; or (b) Complete an evaluation;]

(c) Retain the evaluation and plan of care from the other physical therapy service in the medical record;

(d) [(e)] Document the patient transfer of care in the medical record; and;]

(e) [(d)] Comply with reassessment requirements based on the date of the most recent evaluation.

(4) Reassess each patient in accordance with the following:

(a) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;

(b) Reassessing every ninety (90) days, with the physical therapist assistant present, patients in:

1. A facility defined in 902 KAR 20:086 as an intermediate care facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or

2. A school system.

(a) A forty-five (45) day grace period shall be allowed upon transfer from another school district or from the start of the school year.

(b) During this grace period treatment may continue based upon the previous reassessment or initial evaluation;

(c) Reassessing each patient not otherwise noted every thirty (30) days following the initial evaluation or subsequent reassessment;

(d) Reassessing a patient whose medical condition has changed;

(5) Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;

(6) Be responsible for the physical therapy record of each patient;

(7) Provide services that meet or exceed the generally accepted practice of the profession;

(8) Explain the plan of care to the patient, to others designated

by the patient, and to appropriate professionals;

(9) Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supplier if the physical therapist makes recommendations for those;

(10) Disclose in writing to each patient any financial interest, compensation, or other value to be received by the referral source:

(a) For services provided by the physical therapist;

(b) For equipment rental or purchase; or

(c) For other services the physical therapist may recommend for the patient.

(11) Unless prohibited by law, as members of a business entity be allowed to pool or apportion fees received in accordance with a business agreement.

Section 3. Standards of Practice for the Physical Therapist Assistant. While engaged in the practice of physical therapy, the physical therapist assistant shall:

(1) Provide services only under the supervision and direction of a physical therapist;

(2) Refuse to carry out procedures that the assistant believes are not in the best interest of the patient or that the assistant is not competent to provide by training or skill level;

(3) Initiate treatment only after evaluation by the physical therapist;

(4) Upon direction from the physical therapist, gather data relating to the patient's disability, but not determine the significance of the data as it pertains to the development of the plan of care;

(5) Refer to the physical therapist inquiries that require an interpretation of patient information related to rehabilitation potential;

(6) Comply with the plan of supervision established by the physical therapist;

(7) Communicate with the physical therapist any change or lack of change that occurs in the patient's condition that may indicate the need for reassessment; and

(8) Discontinue physical therapy services if reassessments are not done in compliance with Section 2(4) of this administrative regulation, and communicate to the appropriate parties.

Section 4. Standards for Supervision. While supervising the physical therapist assistant and supportive personnel, the physical therapist shall:

(1)(a) At all times, including all work locations in all jurisdictions, be limited to:

1. Supervising not more than four (4) full-time physical therapist assistants or supportive personnel; or

2. The number of those persons providing part-time patient care for a period equivalent to that provided by four (4) full-time providers of patient care.

(b) Temporary failure to abide by the maximum staffing ratio of physical therapists to physical therapist assistants or supportive personnel required in this section for a period not to exceed seven (7) consecutive work days shall not constitute a violation of this standard;

(2) Not delegate procedures or techniques to the physical therapist assistant or supportive personnel if it is outside his or her scope of training, education or expertise.

(3) Be responsible for:

(a) Interpreting any referral;

(b) Conducting the initial physical therapy evaluation;

(c) Establishing reporting procedures to be followed by the physical therapist assistant and supportive personnel;

(d) Evaluating the competency of the physical therapist assistant and supportive personnel;

(e) Supervising the physical therapist assistant by being available and accessible by telecommunications during the working hours of the physical therapist assistant;

(f) Insuring that if supportive personnel provide direct patient care that there is on site supervision by a physical therapist or physical therapist assistant;

(g) Insuring that a physical therapy student fulfilling clinical education requirements shall receive on-site supervision by a physical therapist;

(h) Insuring that a physical therapist assistant student fulfilling clinical education requirements shall receive on-site supervision of

which eighty (80) percent may be by a credentialed physical therapist assistant;

(i) Establishing discharge planning for patients who require continued physical therapy.

Section 5. Standards for Documentation. The physical therapist shall be responsible for the physical therapy record of a patient. The physical therapy record shall consist of:

(1) The initial evaluation, a written or typed report signed and dated by the physical therapist performing the evaluation that shall include:

(a) Pertinent medical and social history;

(b) Subjective information;

(c) Appropriate objective testing;

(d) Assessment, which may include problems, interpretation, and a physical therapy diagnosis identifying the nature and extent of the patient's impairment; and

(e) Plan of care, including:

1. Treatment to be rendered;

2. Frequency and duration of treatment; and

3. Measurable goals;

(2) Progress notes, which shall be written or typed, signed, and dated by the person rendering treatment, and countersigned and dated by the physical therapist if written by supportive personnel, physical therapist students, physical therapist assistant students, or examination candidates. The progress notes shall include:

(a) A current record of treatment;

(b) Patient's adverse response to treatment;

(c) Any factors affecting treatment; and

(d) Data obtained by all objective tests performed;

(3) Reassessment, which shall be written or typed, signed, and dated by a physical therapist. This reassessment shall be in compliance with Section 2(4)[Section 2(3)] of this administrative regulation:

(a) If the physical therapist is treating the patient, these reports may be incorporated into the progress notes.

(b) If a physical therapist assistant or supportive personnel are treating the patient, the report shall be a separate entry into the record.

(c) A reassessment shall include directly observed objective, subjective, and medical information completed by the physical therapist that is necessary for the revision or reaffirmation of the plan of care and measurable goals;

(4) Discharge summary, which shall be a written or typed, signed, and dated statement.

(a) A physical therapist assistant may write the discharge summary, which shall be countersigned by the responsible physical therapist.

(b) The discharge summary shall include:

1. The date of discharge;

2. The reason for discharge;

3. The physical therapy status upon discharge; and

4. A discharge plan, which shall include recommendations the physical therapist has regarding the need for continuing physical therapy.

5. A discharge summary shall be written within thirty (30) days of the termination of the current plan of care if a subsequent plan of care has not been established; and

(5) The correct designation following the signature of the person who has entered a statement into the patient record shall be as follows:

(a) If written by a physical therapist: "PT". Appropriate designations for advanced physical therapy degrees may follow "PT";

(b) If written by a physical therapist's assistant: "PTA";

(c) If written by supportive personnel: "PT Aide", or "Physical Therapy Aide", or "PT Tech"; and

(d) If written by a student: "Physical Therapist Student" or "PT Student"; "Physical Therapist Assistant Student" or "PTA Student".

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: January 11, 2012

FILED WITH LRC: January 12, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

February 28, 2012, at 3:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 29, 2012. 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: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the code of ethical standards and standards of practice for Physical Therapists and Physical Therapist Assistants.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the standards of practice for credential holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It outlines the ethical conduct and standards of practice for credential holders.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the evaluation process of a patient that has been transferred from another facility.

(b) The necessity of the amendment to this administrative regulation: To clarify the evaluation process.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for the practice of physical therapy.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of initial evaluation of patients and transfer of patients between providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4,500 physical therapists and physical therapist assistants

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 change to regulated entities identified in question (3), only a clarification.

(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 questions (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarification.

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

(a) Initially: No costs to the board.

(b) On a continuing basis: No costs to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A to Agency Revenue Fund.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Physical therapists and physical therapists assistants credentialed by the Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040 and KRS 327.050

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 Kentucky Real Estate Appraisers Board (Amendment)

201 KAR 30:040. Standards of practice.

RELATES TO: KRS 324A.035, 324A.050(1)(j), 12 C.F.R. 225.62-225.67, 12 U.S.C. 3331, 3336, 3339

STATUTORY AUTHORITY: KRS 324A.035(3)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally-related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the standards of professional practice.

Section 1. The following certificate holders or licensees shall comply with the "Uniform Standards of Professional Appraisal Practice" in effect at the time the services were performed:

(1) A certified general real property appraiser;

(2) A certified residential real property appraiser;

(3) A licensed real property appraiser;

(4) An associate real property appraiser; and

(5) A licensed nonfederal real property appraiser.

Section 2. An appraisal report made with regard to a federally

related transaction shall be in writing.

Section 3. The standard for the calculation and reporting of above-grade square footage and below-grade square footage in single-family houses shall be the "American National Standard for Single-Family Residential Buildings; Square Footage-Method for Calculating", ANSI Z765-2003, as approved by the American National Standards Institute, Inc.

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

(a) Uniform Standards of Professional Appraisal Practice, 2012-2013 edition[2010-2011 edition]; and

(b) American National Standard for Single Family Residential Buildings; Square Footage Method for Calculating, ANSI Z765-2003.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517, (202) 347-7722.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: December 20, 2011

FILED WITH LRC: January 13, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2012 at 1:00 p.m., in the office of the Kentucky Board of Real Estate Appraisers; 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658. Individuals interested in attending this hearing shall notify this agency in writing five work-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. Written comments shall be accepted until close of business on February 29, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658; fax (859) 623-2598.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the standards of practice for certified and licensed appraisers.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the standards of practice required of certified and licensed appraisers.

(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 standards of practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the standard of practice required from certificate holders.

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

(a) How the amendment will change this existing administrative

regulation: The amendment updates the reference to identify the 2012-2013 edition of the Uniform Standards of Professional Appraisal Practice as the governing standard.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to specify the standards of practice for certificate holders and licensees.

(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 necessary to administer the law.

(d) How the amendment will assist in the effective administration of the statutes: The standards of practice will assist by clearly identifying the practice required of certificate holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately one thousand five hundred persons certified by the board.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The certificate holders will be required to comply with the standards identified by this amendment.

(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 certificate holders.

(7) Provide an assessment of whether an 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 to implement the changes made by this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders in the class.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. This administrative regulation requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

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

(5) Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What 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 Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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:

DEPARTMENT OF VETERANS' AFFAIRS (Amendment)

201 KAR 37:010. Kentucky Veterans' Program Trust Fund, administration of fund.

RELATES TO: KRS 40.310(3)[41A.055], 40.460(2)(b), 141.444, 186.162(2), 186.168, 434.444(5)

STATUTORY AUTHORITY: KRS 40.310(3), 40.460(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.310(3) authorizes the Department of Veterans' Affairs to accept gifts, grants, and other contributions from a governmental unit and authorizes the department to administer these funds through the use of trust and agency accounts. KRS 40.460(2)(b) establishes the Veterans' Program Trust Fund [and authorizes the Kentucky Department of Veterans Affairs to administer the fund and programs financed by the proceeds and interest derived from the fund]. This administrative regulation establishes a board of directors to administer the fund and establishes criteria for expenditures made from [programs financed by] the fund.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Kentucky Department of Veterans Affairs.

(2) "Fund" means the Kentucky Veterans' Program Trust Fund.

(3) "Honorably separated veteran" means an individual discharged or released from the military with an honorable discharge, a discharge under honorable conditions, or a general discharge.

Section 2. Expenditures and Fundraising. (1) Money appropriated from the fund shall, upon board approval in accordance with this subsection and subsection (2) of this section, be expended for a program or request that provides assistance that directly benefits veterans in the following areas:

(a) Homeless veteran;

(b) Indigent veteran in need of emergency assistance;

(c) Incarcerated veteran in need of emergency assistance that cannot otherwise be provided by the criminal justice system;

(d) Wounded or disabled and other veteran who need transportation to a VA medical facility and who cannot arrange for transportation because of a lack of financial means;

(e) Unemployed veteran through job fairs, training programs, job placement services, and other programs whose primary purpose is to help veteran obtain employment;

(f) Wounded or disabled veteran as determined by the U.S. Department of Veterans Affairs, and including those veterans diagnosed with post-traumatic stress disorder arising from military service;

(g) Wounded or disabled veteran returning from combat in need of specialized therapeutic services that cannot be provided

through United States Department of Veterans Affairs or the Kentucky Department of Veterans Affairs;

(h) Dissemination of veteran benefit information through circulares, brochures, and other media;

(i) Services or goods for veteran who are resident in a long-term care facility operated by the Kentucky Department of Veterans Affairs that cannot otherwise be provided by the department, but that will improve the veterans' quality of life;

(j) Services or goods for state veterans cemeteries operated by the Kentucky Department of Veterans Affairs that cannot otherwise be provided by the department, but that will enhance the dignity, solemnity, and respect shown for the veterans interred at these cemeteries;

(k) Other assistance to ensure that all veterans interred in the state veterans cemeteries receive burial honors befitting of their service to the Commonwealth and country;

(l) Assistance to veteran service organizations for training members to assist veterans; and

(m) Programs, events, memorials, monuments, and other projects that bring public recognition and awareness to the sacrifices, needs, and contributions of Kentucky's veterans;

(2) Money appropriated from the fund shall not be expended for:

(a) Construction, renovation, or maintenance of a meeting hall, clubhouse, or similar facility for use by a veterans' organization;

(b) Entertainment costs;

(c) A benevolent or charitable endeavor that does not primarily benefit veterans;

(d) Support of a federally administered facility if the support is prohibited by law;

(e) A program already funded by the state or federal government. [Criteria for Programs. (1) Money derived from the fund may be expended for an approved program that:

(a) Provides an item for recreation use, services a center, or is for an organization that provides a service to a veteran if the item is not provided by a program, center, or organization established by federal or state law or appropriation;

(b) Organizes and fosters a program that assists a veteran, including assistance in the use of existing resources, that do not duplicate assistance available from a program established by federal or state law or appropriation;

(c) Encourages and assists a veteran to volunteer for a program dealing with a problem encountered by the veteran;

(d) Works with the public and private sectors to honor and recognize the service and sacrifice of veterans;

(e) Provides a service, supply, program, equipment or other expenditure essential to the operation of the Kentucky Veterans Center or other Kentucky veterans nursing homes that would otherwise not be available; or

(f) Provides financial support to the construction or operation of state veterans cemeteries if the support would not otherwise be available.]

(3) Fundraising. [(a)] The fund may accept a gift, donation, or grant from an individual, a corporation, or government entity.

[(b) Solicitation of funds or fundraising on behalf of the fund shall be made unless approved by the commissioner in accordance with KRS 11A.055.]

Section 3. Board of Directors. (1) The board of directors shall consist of eleven (11) members, including:

(a) The commissioner;

(b) The commissioner's designee from Kentucky Department of Veterans' Affairs;

(c) A member of the:

1. Joint Executive Council of Veterans Organizations of Kentucky; and

2. Governor's Advisory Board for Veterans' Affairs;

(d) A representative of the following organizations appointed by the Governor pursuant to subsection (3) of this section:

1. The American Legion, Department of Kentucky;

2. The Veterans of Foreign Wars, Department of Kentucky;

3. The Disabled American Veterans, Department of Kentucky;

and

4. AMVETS, Department of Kentucky; and

(e) Three (3) at-large members appointed by the Governor.

(2)(a) The commissioner shall serve as chair[~~chairman~~] of the board of directors.

(b) The board of directors shall hold an election to fill the position of vice-chair[~~vice-chairman~~].

(3) An organization specified in subsection (1)(d) of this section shall recommend two (2) members of that organization for appointment to the board of directors. The governor shall appoint one (1) member of each organization from the names submitted by the organization.

(4) A member of the board of directors shall be an honorably separated veteran.

(5) Terms of members.

(a) The initial appointments to the board of directors shall be as follows:

1. A member appointed pursuant to subsection (1)(c) of this section shall serve for a period of three (3) years;[.]

2. A member appointed pursuant to subsection (1)(d)[(2)(d)] of this section shall serve for a period of two (2) years; and[.]

3. A member appointed pursuant to subsection (1)(e)[(2)(e)] of this section shall serve for a period of one (1) year.

(b) After the initial appointments established under paragraph (a) of this section, a member shall serve for a period of three (3) years.

(c) A member shall serve until the member's[his] successor is appointed.

(6) The board of directors shall:

(a) Meet at the call of the commissioner[~~chairman~~];

(b) Inform organizations represented on the board of each action considered or taken by the board;

(c) Review projects and recommend approval or disapproval;

(d) Prioritize projects;

(e) Investigate the need for a specific project or program;

(f) Establish guidelines for a project;

(g) Make a recommendation to the commissioner for the utilization and control of funds in the Veterans' Program Trust Fund; and

(h) Prepare an annual report providing an accounting of the Veterans' Program Trust Fund assets and financial activity for each fiscal year.

(7) The commissioner[~~chairman of the fund~~] shall assign duties as appropriate to department[his] staff or members of the board for the conduct of business by the board including maintaining the records of the fund that are required for the administration of the Veterans' Program Trust Fund and approved projects.

KENNETH R. LUCAS, Commissioner

APPROVED BY AGENCY: January 5, 2012

FILED WITH LRC: January 5, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on February 21, 2012, at 8:30 a.m. Eastern Time, at 1111B Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 29, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Dennis W. Shepherd, Staff Attorney, Office of the Commissioner, Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203, fax (502) 564-9240.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dennis W. Shepherd

(1) Provide a brief summary of:

(a) What this administrative regulation does: provides for administration of Veterans Program trust fund through the Department

of Veterans Affairs and creates a board comprised of members of veterans' service organizations to review expenditure requests.

(b) The necessity of this administrative regulation: KRS 40.460(2)(b) creates Veterans Program Trust Fund; regulation necessary to impose rules for expenditures, to provide for administration of fund, and to create and maintain a trust fund board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 40.310(3) authorizes the Department of Veterans' Affairs to accept gifts, grants, and other contributions from governmental units and authorizes the department to administer these funds through the use of trust and agency accounts. KRS 40.460(2)(b) establishes the Veterans' Program Trust Fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will continue to assist in the effective administration of KRS 40.460(2)(b) by providing rules for expenditures and for a trust fund board.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies necessity, function, and conformity by deleting language erroneously assigning overall responsibility to the Kentucky Department of Veterans' Affairs when that responsibility rests with the Board of Directors; in addition, the area of Trust Fund expenditures has been largely revised to ensure that grants of money from the fund go to programs that directly benefit Kentucky veterans. The amendment also corrects minor errors in the language and uses gender-neutral language.

(b) The necessity of the amendment to this administrative regulation: The regulation as currently written is overbroad in authorizing expenditures. Drawing on the collective experience of past Trust Fund meetings, the authorized expenditures are set out in clearer language and follow the general rule that they go to the direct benefit of Kentucky veterans.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation as amended more closely conforms to content of authorizing statutes by more clearly delineating extent of permissible expenditures. Also the amendment eliminates reference to KRS 11A.055, which only relates to fundraising for 501c organizations and other specific programs, and not to fundraising for veterans or for the Veterans Program Trust Fund.

(d) How the amendment will assist in the effective administration of the statutes: See response to (c), above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only organizations that request funds from Veterans Program Trust Fund 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: Organizations that request funds from Veterans Program Trust Fund will need to establish that the program meets the criteria in the regulation, and that the program provides benefits, tangible or intangible, directly to Kentucky veterans.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Qualifying programs that provide services to veterans can receive assistance from Veterans Program Trust Fund, with approval of the board and the Commissioner of the Department of Veterans Affairs.

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

(a) Initially: Trust fund is already operational and board is in place.

(b) On a continuing basis: Minimal transportation expenses for board operation; Department of Veterans Affairs maintains the trust fund accounts and conducts day-to-day administration of fund.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Veterans Program Trust Fund receives portions of fees for veteran-related license plates sold pursuant to KRS 186.162, voluntary donations of state income tax refunds pursuant to KRS 141.444, and individual donations. Fines for misrepresenting military status would go into fund too, pursuant to KRS 434.444(5).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase of funding necessary for this modification of an existing 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. This regulation affects only the Department of Veterans Affairs, the Veterans Program Trust Fund, its board, and those who make requests to board to fund programs for veterans. No government entities, businesses or organizations that are not intended to be subject to the regulation are affected by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only (Kentucky) Department of Veterans Affairs and Veterans Program Trust Fund board will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 40.310(3); KRS 40.460(2)(b)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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. The Veterans Program Trust Fund is already in place. Regarding (a) – (d) below, the Veterans Program Trust Fund is an off-budget account, with revenues coming primarily from portions of fees for veteran-related license plates sold pursuant to KRS 186.162. The fund also receives voluntary donations of state income tax refunds pursuant to KRS 141.444, and individual contributions. The amendment will have no effect on the amount of money the fund receives and no substantial effect on what the fund distributes.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) 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?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:152. Asian Carp Harvest Program.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the department's Asian carp harvest program.

Section 1. Definitions. (1) "Asian carp" means silver carp, big-head carp, black carp, or grass carp.

(2) "By-catch" means any fish that is not an Asian carp.

(3) "Program participant" means a commercial fisherman who is:

(a) Enrolled in the Asian Carp Harvest Program; and

(b) Fishing in restricted water.

(4) "Restricted water" means those areas, pursuant to 301 KAR 1:140, 1:150, and 1:155, where:

(a) Commercial fishing is prohibited; or

(b) Commercial fishing with gill or trammel nets is prohibited.

(5) "Whip net set" means a gill or trammel net that is: (a) Set to encircle and harvest Asian carp; and

(b) Always tended by a program participant while in the water.

Section 2. Qualifications. A commercial fisherman shall:

(1) Contact the department and request to be included in the program;

(2) Possess a valid Kentucky commercial fishing license;

(3) Have possessed a valid Kentucky commercial fishing license for at least three (3) consecutive years; and

(4) Have reported a harvest of at least 10,000 pounds of fish per year for a three (3) consecutive year period.

Section 3. Program Participant Requirements. A program participant shall:

(1) Obtain an agreement with a fish buyer to deliver a requested poundage of Asian carp;

(2) Call the department at 800-858-1549 at least forty-eight (48) hours in advance of the requested fishing date and provide the following information:

(a) The participant's name;

(b) The fish buyer's name and phone number;

(c) Date requested;

(d) The restricted water to be fished; and

(e) The total poundage of the Asian carp requested by the fish buyer.

(3) Only harvest Asian carp;

(4) Only fish:

(a) On dates approved by the department;

(b) At a location approved by the department; and

(c) When a department observer is present;

(5) Only use a whip net set with a minimum bar mesh size of three and one quarter (3.25) ~~four and one-half (4.5)~~ inches;

(6) Sign a Daily Harvest and Release Summary Card immediately after each day's fishing;

(7) Be allowed to sell all harvested Asian carp;

(8) Immediately release all by-catch; and

(9) Report all harvest on a Monthly Report of Commercial Fish Harvest form, pursuant to the requirements of 301 KAR 1:155.

Section 4. Department Requirements. (1) The department shall:

(a) Maintain a list of program participants and their contact information which shall be:

1. Provided to known fish buyers; and

2. Updated at least weekly.

(b) Review all restricted water fishing requests pursuant to the requirements of Section 3 of this administrative regulation;

(2) The department shall approve a qualified fishing request by assigning:

(a) A department observer to each program participant;

(b) A fishing location for a program participant and department observer, except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and

(c) The time period when fishing may occur, not to exceed a three (3) consecutive day period; and

(3) A department observer shall:

(a) Contact the program participant for an arranged meeting time and location;

(b) Be present during each approved fishing period by either:

1. Traveling in the participant's boat, if allowed; or

2. Following the participant in a department boat;

(c) Monitor Asian carp harvest and release of by-catch during each approved fishing period; and

(d) Complete a Daily Harvest and Release Summary Card.

(4) The department shall not approve a fishing request for the following reasons:

(a) Higher than normal by-catch is likely to occur at that location and time;

(b) Two (2) program participants have already been approved for the same one-half (1/2) mile section of water at the same time;

(c) A requested date falls on:

1. Memorial Day;

2. Labor Day;

3. July 4; or

4. A Saturday or Sunday from April 1 through September 30; or

(d) A department observer is unavailable on the requested date.

Section 5. Program disqualification. A program participant whose commercial fishing license becomes revoked or suspended pursuant to 301 KAR 1:155 shall be disqualified from participating in the Asian carp harvest program while that license is revoked or suspended.

Section 6. Incorporation by Reference. (1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by reference.

(2) The Daily Harvest and Release Summary Card 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.

BENJY T. KINMAN, Deputy Commissioner,

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: January 10, 2012

FILED WITH LRC: January 11, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2012, at 11 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 by February 29, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400 fax (502) 564-9136, email: fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Asian carp harvest program, which allows commercial harvest of Asian carp in

waters currently restricted to commercial fishing.

(b) The necessity of this administrative regulation: The regulation is necessary to provide an important mechanism for the removal of invasive and exotic Asian carp from waters critical to sport fishing and recreational boating. Left uncontrolled, Asian carp will dominate the aquatic ecosystem and potentially destroy a fishery that is critical to the economy of Kentucky. Asian carp are also problematic and dangerous for recreational boaters since they grow to large sizes and have a propensity to jump into moving boats.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the purpose of the statute by establishing a process for nuisance fish removal from waters of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the minimum mesh size that a commercial fisherman may use to harvest Asian carp from four and five-tenths (4.5) inches to three and one-quarter (3.25) inches..

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to enable commercial fisherman to harvest smaller Asian carp.

(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: This regulation will potentially affect at least 20 commercial fishermen that are initially anticipated to participate in Asian carp removal from restricted waters. Additionally, this regulation may affect all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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: Commercial fishermen who want to participate in this program will be required to meet the minimum qualifications for participating in this program, and also follow the necessary fishing and reporting requirements identified in this administrative regulation. Anglers and recreational boaters are not affected by this regulation beyond sharing the restricted waters when commercial fishermen are harvesting Asian carp.

(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 commercial fishermen to participate in this program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen will benefit from this amendment because they will be able to use smaller mesh nets which will increase the number of Asian carp that will be harvested. Anglers and recreational boaters will benefit from this program because commercial fishing will remove more Asian carp prior to their age at first maturity. This will allow further control of Asian carp population growth.

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

(a) Initially: This program may initially cost the department approximately \$30,000 to provide observers, coordination, and reports. This regulation amendment will not result in further cost to the Department.

(b) On a continuing basis: There will be a continual cost to the Department of approximately \$30,000 to provide observers, coordination, and reports. This regulation amendment will not result in further cost to the Department.

(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: No increase in fees is anticipated to fund this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established for this program.

(9) TIERING: Is tiering applied? Tiering was not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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' Fisheries Division and Law Enforcement Division will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 directly generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not directly generate revenue for state or local government, but local fisheries and therefore local economies could be positively impacted in the future through removal of Asian carp species.

(c) How much will it cost to administer this program for the first year? It will cost the Department approximately \$30,000 in the first year to provide observers, coordination, and reports.

(d) How much will it cost to administer this program for subsequent years? It will cost the Department approximately \$30,000 annually in subsequent years to provide observers, coordination, and reports.

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 Kentucky Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

RELATES TO: KRS 150.010, 150.177, 150.180, ~~150.390~~, 150.411(3), 150.990, 237.110

STATUTORY AUTHORITY: KRS 150.025(1), 150.170, 150.175, ~~150.390(1)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish hunting seasons, bag limits, methods of taking, and to promulgate administrative regulations establishing hunting seasons, bag limits of taking wildlife. KRS 150.170 exempts certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits to be issued by the department. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of Chapter 150 or its regulations. This administrative regulation establishes deer hunting seasons and zones, legal methods of taking, and checking and recording requirements for deer hunting.

Section 1. Definitions. (1) "Additional deer permit" means a permit that allows the holder to take up to two (2) additional deer beyond those allowed by the statewide permit in the following combinations:

(a) One (1) antlered deer and one (1) antlerless deer; or

(b) Two (2) antlerless deer.

(2) "Adult" means a person who is at least eighteen (18) years of age.

(3) [(2)] "Antlered deer" means a deer with a visible antler protruding above the hairline.

(4) [(3)] "Antlerless deer" means a deer with no visible antler protruding above the hairline, and includes:

(a) Female deer; and

(b) Male fawns or button bucks.

(5) [(4)] "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(6) [(5)] "Arrow" means the projectile fired from a bow or crossbow.

(7) [(6)] "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal. [(7) "Bonus antlerless permit" means a permit that, in conjunction with appropriate licenses, permits, seasons, and methods, allows the holder to take two (2) additional antlerless deer.]

(8) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(9) "Deer" means a member of the species *Odocoileus virginianus*.

(10) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(11) "Fully-automatic firearm" means a firearm that fires more than one (1) time with a single pull of the trigger.

(12) "License year" means the period from March 1 through the following last day of February.

(13) "Modern gun" means a rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(14) "Muzzle-loading gun" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(15) "Shotshell" means ammunition containing more than one (1) projectile.

(16) "Statewide deer permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:

(a) One (1) antlered deer and one (1) antlerless deer; or

(b) Two (2) antlerless deer [take one (1) either-sex deer and one (1) antlerless deer.]

(17) "Statewide deer requirements" means the season dates, zone descriptions, bag limits, and other requirements and restrictions for deer hunting established in this administrative regulation.

(18) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(19) "Zone" means an area consisting of counties designated by the department within which deer hunting season dates and limits are set for the management and conservation of deer in Kentucky.

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Section 2. License and Deer Permit Requirements. (1) Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid Kentucky hunting license and valid deer permit while hunting.

(2) In lieu of a statewide deer permit, a person possessing a valid junior statewide hunting license shall not use more than two (2) junior deer hunting permits.

(3) An additional deer [A bonus antlerless] permit shall not be valid unless accompanied by a valid Kentucky hunting license and statewide deer permit.

Section 3. Hunter Restrictions. (1) A deer hunter:

(a) Shall not take deer except during daylight hours;

(b) Shall not use dogs, except leashed tracking dogs to recover wounded deer;

(c) Shall not take a deer that is swimming; and

(d) Shall not take a deer from a vehicle, boat, or on horseback, except that a hunter with a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform.

(e) Shall not possess or use a decoy or call powered by electricity from any source.

(2) A deer hunter shall not take a deer with any device except a firearm, crossbow, or archery equipment as authorized by Section 5 of this administrative regulation.

(3) A person shall not use any of the following items to take a deer:

(a) Rimfire ammunition;

(b) A fully-automatic firearm;

(c) A firearm with a magazine capacity greater than ten (10) rounds;

(d) Full metal jacketed ammunition;

(e) Tracer bullet ammunition;

(f) A shotshell containing larger than number two (2) size shot;

(g) A broadhead smaller than seven-eighths (7/8) inch wide;

(h) A barbed broadhead;

(i) A crossbow without a working safety device;

(j) A chemically-treated arrow;

(k) An arrow with a chemical attachment;

(l) Multiple projectile ammunition; or

(m) Any weapon that is not consistent with the appropriate season established in Section 5 of this administrative regulation.

Section 4. Hunter Orange Clothing Requirements. (1) During the modern gun deer season, muzzle-loader season and any youth firearm season, a person hunting any species during daylight hours and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl.

(2) During an elk firearm season as established in 301 KAR 2:132, a person hunting any species and any person accompanying a hunter within the elk restoration zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl.

(3) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

(4) A camouflage-pattern hunter orange garment worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.

Section 5. Statewide Season Dates. (1) A deer hunter may use archery equipment to hunt deer statewide from the first Saturday in September through the third Monday in January.

(2) A deer hunter may take deer with a modern firearm statewide beginning the second Saturday in November:

(a) For sixteen (16) consecutive days in Zones 1 and 2; and

(b) For ten (10) consecutive days in Zones 3 and 4.

(3) A deer hunter may use a muzzle-loading gun to hunt deer statewide:

(a) For two (2) consecutive days beginning the third Saturday in October;

(b) For nine (9) consecutive days beginning the second Saturday in December; and

(c) During any season when a modern gun may be used to take deer.

(4) A deer hunter may use a crossbow to hunt deer statewide:

(a) From October 1 through the end of the third full weekend in October;

(b) From the second Saturday in November through December 31; and

(c) During any season when a firearm may be used to take deer.

(5) Youth firearm season. For two (2) consecutive days beginning on the second Saturday in October, a youth deer hunter shall:

(a) Use any legal method to take antlered or antlerless deer; and

(b) Be required to follow all other statewide deer hunting requirements.

(6) There shall be a free youth weekend for two (2) consecutive days beginning on the Saturday after Christmas during which a youth shall:

(a) Not be required to have a hunting license or deer permit;

(b) Use any legal method to take antlered or antlerless deer; and

(c) Be required to follow all other statewide deer hunting requirements.

Section 6. Zones. (1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, Harrison, Henry, Hickman, Jefferson, Kenton, Livingston, Lyon, Marshall, McCracken, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Trigg, Trimble, Washington, and Woodford Counties.

(2) Zone 2 shall consist of Allen, Bourbon, Boyd, Bullitt, Carter, Fayette, Fleming, Green, Greenup, Hardin, Hart, Henderson, Hopkins, Jessamine, Larue, Lawrence, Lewis, Logan, Mason, McLean, Mercer, Muhlenberg, Nelson, Nicholas, Todd, Union, and Webster Counties.

(3) Zone 3 shall consist of Adair, Barren, Bath, Boyle, Breckinridge, Butler, Casey, Clark, Cumberland, Daviess, Edmondson, Elliott, Estill, Grayson, Hancock, Johnson, Lincoln, Madison, Marion, Meade, Menifee, Metcalf, Monroe, Montgomery, Morgan, Ohio, Powell, Rowan, Simpson, Taylor, Warren, and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Clinton, Floyd, Garrard, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Martin, McCreary, Owsley, Perry, Pike, Pulaski, Rockcastle, Russell, Wayne, and Whitley Counties.

Section 7. Season and Zone Limits. (1) A person shall not take more than four (4) deer statewide in a license year except:

(a) As authorized in 301 KAR 2:111, 2:176, 2:178, and 3:100; and

(b) A person may take an unlimited number of antlerless deer in Zone 1 provided the person has purchased the appropriate bonus permits.

(2) A person shall not take more than one (1) antlered deer per license year, regardless of the permit type used, except as established in 301 KAR 2:111, 2:178, and 3:100.

(3) In Zone 3, a person may take two (2) deer with a firearm.

(4) In Zone 4, a person may take:

(a) Only two (2) deer with a firearm; and

(b) Antlered deer only during:

1. Modern firearm season;

2. Early muzzleloader season; and

3. The first six (6) days of the December muzzleloader season.

(5) The aggregate bag limit for Zones, 2, 3, and 4 shall be four (4) deer per hunter.

Section 8. Supervision of Youth Firearm Deer Hunters. (1) An adult shall:

(a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the youth's firearm.

(2) An adult accompanying a youth hunter shall not be required

to possess a hunting license or deer permit if the adult is not hunting.

Section 9. Harvest Recording. (1) Immediately after taking a deer, and prior to moving the carcass, a person shall record, in writing:

- (a) The species taken;
- (b) The date taken;
- (c) The county~~[country]~~ where taken; and
- (d) The sex of the deer taken on one (1) of the following:

1. The hunter's log section on the reverse side of a license or permit;

2. The hunter's log produced in a hunting guide;
3. A hunter's log printed from the Internet;
4. A hunter's log available from any KDSS agent; or
5. An index or similar card.

(2) The person shall retain and possess the completed hunter's log when the person is in the field during the current hunting season.

Section 10. Checking a Deer. (1) A person shall check a harvested deer by:

(a) Calling the toll free telecheck number at (800) 245-4263 or on the department's website at fw.ky.gov:

1. Before midnight on the day the deer is recovered; and

2. Prior~~[number, (800) 245-4263, or completing the department's Web site at fw.ky.gov before midnight on the day the deer is recovered and prior]~~ to processing or removing the hide or head from the carcass;

(b) Providing the information requested by the automated check-in system; and

(c) Writing the confirmation number given by the system on the hunter's log authorized in Section 9 of this administrative regulation.

(2) If a hunter transfers possession of a harvested deer~~[deer]~~ the hunter shall attach to the carcass a hand-made tag that contains the following information:

- (a) The confirmation number;
- (b) The hunter's name; and
- (c) The hunter's telephone number.

(3) A person shall not provide false information while completing the hunter's log, checking a deer, or creating a carcass tag.

Section 11. Transporting and Processing Deer. (1) A person shall:

(a) Not transport an unchecked deer out of Kentucky;

(b) Have proof that a deer or parts of deer brought into Kentucky were legally taken;

(c) Not sell deer hides except to a licensed:

1. Fur buyer;
2. Fur processor; or
3. Taxidermist.

(2) A taxidermist or an individual who commercially butchers deer shall:

(a) Not accept deer carcasses or any part of a deer without a valid disposal permit issued by the department pursuant to KRS 150.411(3) or a proper carcass tag as established in Section 10 of this administrative regulation.

(b) Keep accurate records of the hunter's name, address, confirmation number, and date received for each deer in possession and retain such records for a period of one (1) year.

BENJY KINMAN, Deputy Commissioner,

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: January 10, 2012

FILED WITH LRC: January 1, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2012, 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 Way, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing 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 attend the public hearing, you may submit written comments on the proposed administrative regulation by February 29, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes deer hunting seasons and zones, methods of taking, bag limits, harvest recording procedures, and checking requirements.

(b) The necessity of this administrative regulation: To allow for safe and effective harvest and related record-keeping for the long-term conservation and management of deer populations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and the methods to take wildlife. KRS 150.170 exempts certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits that are issued by the department. KRS 150.390 prohibits the taking of deer in any manner contrary to any provisions of Chapter 150 or its regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the seasons, limits, procedures, and requirements authorized by the statutes.

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

(a) How the amendment will change this existing administrative regulation: The amendment allows hunters who have purchased only a statewide permit for deer to harvest 2 antlerless deer and then purchase an additional 2-deer permit without losing their opportunity to harvest 1 antlered deer for the season. Currently, if a hunter kills 2 does but has not already purchased a "bonus antlerless-only tag", he/she cannot harvest an antlered deer that season. This change will encourage doe harvest by enabling hunters to go ahead and harvest 2 does before they purchase an additional deer tag without penalizing them with the loss of opportunity to take an antlered buck.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to encourage hunters to harvest antlerless deer without losing their opportunity to harvest an antlered deer.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All deer hunters must comply with the requirements, seasons and limits in this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hunters must purchase additional deer permits to harvest more than 2 deer, regardless of the gender of the first 2 deer harvested.

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): There will be no additional cost to hunters as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The requirement that a hunter purchase an additional deer permit prior to harvesting 2 antlerless deer before they harvest an antlered deer has caused much hunter confusion in the past, as well as discouraged the harvest of antlerless deer. This change will improve hunter satisfaction and willingness to harvest antlerless deer.

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

(a) Initially: There will be no additional cost to the department to implement this administrative regulation.

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase 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: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not used because all deer hunters are subject to the same seasons, bag limits, and zone requirements for hunting.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, KRS 150.170, KRS 150.175 and KRS 390.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Direct revenue from the sale of all deer permits for the 2010-11 deer season was \$3,677,480.00.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue during subsequent years is dependent on the number of permits sold, which has been stable to slightly decreasing in recent years.

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

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

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

Revenues (+/-): None; see 4 (a) and (b) above.

Expenditures (+/-): No additional expenditures; see 4 (c) and (d) above

Other Explanation:

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

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks,~~[and]~~ other public lands, and federally controlled areas.

RELATES TO: KRS 150.010, 150.170, 150.340, 150.370(1), [150.340, 150.370(1), 150.390,] 150.990

STATUTORY AUTHORITY: 148.029(5), 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of Chapter 150 or its regulations. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas that differ from statewide requirements. ~~[that differ from statewide requirements and on state parks.]~~

Section 1. Definitions. (1) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife.

(2) "Centerfire" means a type of firearm that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(3) "In-line muzzleloading gun" means a firearm capable of being loaded only from the discharging end of the barrel or cylinder, that is also equipped with an enclosed ignition system located directly behind the powder charge.

(4) "Mobility-impaired" means an individual who meets the requirements of Section 2(1) of 301 KAR 3:026.

(5) "Modern firearm season" means the ten (10) or sixteen (16) consecutive day period beginning the second Saturday in November when breech-loading firearms may be used to take deer pursuant to 301 KAR 2:172.

(6) "Optical enhancement" means any sighting device other than open or "iron" sights.

(7) "Quota hunt" means a Wildlife Management Area or state park hunt where a participant is selected by a random drawing.

(8) "Statewide requirements" mean the season dates, zone descriptions, and other requirements for deer hunting established in 301 KAR 2:172.

(9) "Wildlife management area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

(10) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

Section 2. General WMA Requirements. (1) Unless specified in this administrative regulation, statewide requirements shall apply to a WMA.

(2) A hunter shall not take more than one (1) deer per day on a WMA in Zones 2, 3, or 4, except:

(a) During a quota hunt; or

(b) The Grayson Lake WMA open youth deer hunt, ~~[hunt; or~~

~~(c) West Kentucky WMA firearms season.]~~

(3) Unless specified in Section 6 of this administrative regulation, if a WMA is in two (2) or more deer hunting zones as established in 301 KAR 2:172, then the WMA shall be regulated by the

most liberal zone requirements of the zones in which it lies.

(4) Deer hunting on WMAs listed in Section 6 of this administrative regulation, shall be permitted only as stated, except archery hunting is allowed under the statewide archery requirements established in 301 KAR 2:172, unless otherwise noted.

(5) An open firearm deer hunt, beginning on the Wednesday following the third Monday in January for ten (10) consecutive days, shall:

(a) Be limited to members of the United States Armed Forces and the National Guard and reserve component who:

1. Are residents of Kentucky or nonresidents stationed in Kentucky; and

2. Were deployed out-of-country during any portion of the most recent regular statewide deer season.

(b) Only be on a WMA designated as open for this special hunt; and

(c) Follow statewide requirements established in 301 KAR 2:172.

(6) On all WMA's and Otter Creek Outdoor Recreation Area.~~[On a WMA,]~~ a person:

(a) Shall not use a nail, spike, screw-in device, wire, or tree climber for attaching a tree stand or climbing a tree;

(b) May use a portable stand or climbing device that does not injure a tree;

(c) Shall not place a portable stand in a tree more than two (2) weeks before opening day, and shall remove it within one (1) week following the last day, of each hunting period;

(d) Shall plainly mark the portable stand with the hunter's name and address;

(e) Shall not use an existing permanent tree stand; and

(f) Shall not place, distribute, or hunt over bait.

(7) A person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area except:

(a) To travel through a WMA on an established road or to use an area designated open by a sign; or

(b) One (1) ~~assistant~~~~[assistant]~~ who shall not be required to have applied for the quota hunt, may accompany a mobility-impaired hunter who was drawn to hunt.

(8) Except for waterfowl or dove hunting, or legal hunting at night, a person who is hunting any species or a person who is accompanying a hunter, shall wear hunter orange clothing pursuant to 301 KAR 2:172 while:

(a) On a WMA when firearms deer hunting is allowed; or

(b) Hunting within the sixteen (16) county elk zone when a firearms elk season is open.~~[A person hunting any species except waterfowl hunting or hunting at night, or a person accompanying a hunter shall wear hunter orange clothing as specified in 301 KAR 2:172 while on a WMA when firearms are permitted for deer hunting or while hunting within the sixteen (16) county elk zone when firearm elk season is in progress.]~~

Section 3. General Quota Hunt Procedures. (1) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(2) If selected for a quota hunt other than the Taylorsville Lake WMA antlerless-only hunt, a person shall lose all accumulated preference points.

(3) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(4) A person shall forfeit all accumulated preference points if, in a given year, they do not apply for:

(a) A deer quota hunt; and

(b) The no-hunt option.

(5) A person who applies for the no-hunt option shall:

(a) Not be drawn for a quota hunt; and

(b) Be given one (1) preference point for each year the no-hunt option is selected.

(6) If applying as a party:

(a) Each applicant's preference points are independent of each other; and

(b) The entire party is selected if one (1) member of the party is selected.

(7) [If a person does not apply for a deer quota hunt in a given year, then all accumulated preference points shall be forfeited.

(5) Each applicant's preference points are independent of each other. If applying as a party, the entire party is selected if one (1) member of the party is selected.

(6)] The commissioner may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(8) A hunter may take up to two (2) deer on a quota hunt in Zones 2, 3, and 4.~~[(7) A hunter may take up to two (2) deer on a quota hunt,]~~ only one (1) of which may be an antlered deer, except as authorized in Section 6 of this administrative regulation.

(9) Provided a person has purchased the appropriate permits, a hunter may take unlimited antlerless deer in:

(a) The West Kentucky WMA firearms season;

(b) WMA quota hunts in Zone 1; and

(c) State Park quota hunts in Zone 1, except as specified in section 7 of this administrative regulation.

(10) One (1) person shall be drawn from the eligible quota hunt applicants who were not selected in the original drawing, and shall receive~~[(8) There shall be one (1) person drawn from the eligible quota hunt applicants who were not selected in the original drawing. This person shall receive]~~ one (1) deer permit that carries with it all the privileges of the Special Commission Permit described in 301 KAR 3:100.

Section 4. Quota Hunt Application Process. A person applying for a quota hunt shall:

(1) Call the toll free number listed in the current fall hunting and trapping guide~~[from a touch-tone phone]~~ or apply online at fw.ky.gov between September 1 and September 30;

(2) Enter each applicant's Social Security number;

(3) Select:

(a) A first and second choice of hunts; or

(b) The no-hunt option.~~[Indicate a first and second choice of hunts; and]~~

(4) Pay a three (3) dollar application fee for each applicant, prior to the draw by:

(a) Check;

(b) Money order;

(c) Visa; or

(d) Master Card.

(5) Not apply more than one (1) time;

(6) Not apply as a group of more than five (5) persons; and

(7) Not be eligible to participate in a quota hunt unless selected pursuant to this administrative regulation, or accompanying a mobility-impaired hunter.

Section 5. Quota Hunt Participant Requirements. Except as otherwise specified in this administrative regulation, a person selected to participate in a quota hunt shall:

(1) Possess an annual Kentucky hunting license, except as provided in KRS 150.170(3) and 150.170(6);

(2) Possess a deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;

(3) Possess an additional deer permit if the person does not want a harvested antlerless deer apply toward the statewide bag limit, pursuant to 301 KAR 2:172.~~[Possess an unused bonus deer permit, if the person has already taken the two (2) deer authorized by possession of the statewide deer permit;]~~

(4) Not be required to possess a deer permit if the person:

(a) Is under twelve (12) years old;

(b) Possesses and presents a senior/disabled combination hunting and fishing license at check-in; or

(c) Is on military furlough for more than three (3) days.~~[person possesses and presents a senior/disabled combination hunting and fishing license at time of check-in, is on military furlough for more than three (3) days, or is under twelve (12) years of age;]~~

(5) Hunt on assigned date and in assigned areas selected by a random drawing of applicants if necessary;

(6) Comply with hunting equipment restrictions specified by the type of hunt;

- (7) Check in at the designated check station:
 (a) Either:
 1. On the day before the hunt, between noon and 8 p.m. local time; or
 2. On the day of the hunt, between 5:30 a.m. and 8 p.m. Eastern time; and
 (b) With documentation of the participant's:
 1. Social Security number or draw confirmation number; and
 2. Purchase of a current statewide deer permit;
 (8) Check out at the designated check station:
 (a) If finished hunting;
 (b) If the hunter's bag limit is reached; or
 (c) By 8 p.m. Eastern time on the final day of the hunt;
 (9) Take a harvested deer to the designated check station by 8 p.m. Eastern time the day the deer was harvested.
 (10) Be declared ineligible to apply for the next year's drawing if the hunter fails to check out properly; and
 (11) Comply with all waterfowl, pheasant, quail, and deer quota hunt requirements, including the fifteen (15) inch minimum outside antler spread harvest restriction for antlered deer when in effect, or be ineligible to apply for any quota hunt for these species the following year.

Section 6. Wildlife Management Area Requirements.~~[Hunting Dates, Requirements and Restrictions.]~~ (1) Adair WMA. The crossbow season shall be open under statewide requirements.

(2) Ballard WMA.

(a) On the main tract, the quota hunt shall be for two (2) consecutive days beginning on the first Saturday in November.

(b) On the main tract, the archery, crossbow, and youth firearm seasons shall be open under statewide requirements through October 14, except that the two (2) mile driving loop marked by signs shall be closed to all hunting;

(c) The crossbow, modern firearm, youth firearm, and muzzleloader seasons shall be open under statewide requirements only on the 400 acre tract south of Sallie Crice Road.

(d) A hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(3) Barren River WMA. The area shall be open under statewide requirements except that on the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not hunt deer with a modern firearm.

(4) Beaver Creek WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The limit shall be one (1) deer during the quota hunt.

(c) The crossbow season shall be open under statewide requirements.

(d) A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(5) Bluegrass Crossing WMA. The crossbow season shall be open under statewide requirements.

(6) Boatwright WMA. The area shall be open under statewide requirements, except that:

(a) On the Swan Lake Unit the archery and crossbow season shall be open under statewide requirements through October 14; and

(b) The October youth deer season shall be open under statewide requirements.

(7)~~[(6)]~~ Cedar Creek Lake WMA. The crossbow season shall be open under statewide requirements.

(8)~~[(7)]~~ Clay WMA.

(a) On the main tract, crossbow and youth firearm seasons shall be open under statewide requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049.

(b) The remainder of the WMA shall be open under statewide requirements for the archery, crossbow, and youth seasons, except during the quota deer hunt.

(c) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(d) A quota hunt participant shall be given one (1) preference point for each female deer checked-in.

(e) Hunters drawn for the quota hunt may harvest up to four (4)

deer, only one (1) of which may be antlered.

~~(9)~~~~[(8)]~~ Dewey Lake WMA.

(a) The crossbow and youth firearm seasons shall be open under statewide requirements.

(b) The use of firearms shall be prohibited for deer hunting on the portion of the area extending southward from the dam to Shoreline Campground Number One, and including all property from the WMA boundary downslope to the lake edge.

(c) A deer hunter shall not take a deer with antlers that have an outside spread ~~[of]~~ less than fifteen (15) inches.

~~(10)~~~~[(9)]~~ Dix River WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide requirements.

~~(11)~~~~[(40)]~~ Fishtrap Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning on the Saturday before Thanksgiving.

(b) The limit for the quota hunt shall be one (1) deer.

(c) The crossbow and youth firearm season shall be open under statewide requirements.

~~(12)~~~~[(44)]~~ Grayson Lake WMA.

(a) An open youth hunt shall:

1. Be the first Saturday in November for two (2) consecutive days;

2. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer; and

3. Have bonus deer permits apply.

(b) A person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt, except to:

1. Travel through the WMA on an established public road; or

2. Use an area designated as open by signs.

(c) The property of Camp Webb shall be open for a mobility-impaired deer hunting event during the first weekend of October as established in 301 KAR 3:110.

(d) The crossbow hunt shall be from the first Saturday in September through the third Monday in January, except during the November open youth hunt.

(e) The statewide youth firearm season shall be open under statewide requirements.

~~(13)~~ ~~[(42)]~~ Green River Lake WMA and Dennis-Gray WMA.

(a) The crossbow season shall be open under statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) Fifteen (15) openings shall be reserved in the quota hunt for mobility-impaired persons.

(d) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches~~[of less than fifteen (15) inches]~~

(e) The Green River Lake and Dennis-Gray WMAs shall be considered to be located in the Eastern Time Zone.

(14) Griffith Woods WMA. The crossbow and youth firearms seasons shall be open under statewide requirements.

~~(15)~~~~[(43)]~~ Higginson-Henry WMA.

(a) The youth firearm deer season shall be open under statewide requirements.

(b) A deer hunter shall not take a deer with antlers that have an outside spread ~~[of]~~ less than fifteen (15) inches.

(c) A hunter shall not take more than one (1) deer from the WMA per license year.

~~(16)~~~~[(44)]~~ J.C. Williams WMA. The crossbow season shall be open under statewide requirements.

~~(17)~~~~[(45)]~~ Kentucky River WMA. The crossbow and youth firearm seasons shall be open under statewide requirements.

~~(18)~~~~[(46)]~~ Kleber WMA.

(a) The crossbow season shall be open under statewide requirements, except during a quota hunt.

(b) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December.

(c) The youth firearm season shall be open under statewide requirements.

~~(19)~~~~[(47)]~~ Knobs State Forest WMA. The crossbow season

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shall be open under statewide requirements.

~~(20)[(18)]~~ Lake Barkley WMA shall be open under statewide requirements except

(a) The North Refuge is closed from November 1 to February 15; and

(b) Duck Island is closed from October 15 to March 15.

~~(21)[(19)]~~ Lewis County WMA.

(a) The modern firearm and youth firearm seasons shall be open under statewide requirements, except [that] the use of centerfire rifles and handguns shall be prohibited.

(b) The crossbow and muzzleloader seasons shall be open under statewide requirements.

~~(22)[(20)]~~ Livingston County WMA. The crossbow, youth firearm, muzzleloader, and modern firearm seasons shall be open under statewide requirements, except a person shall not hunt deer with a modern gun during the modern firearm deer season.

~~(23)[(21)]~~ Curtis Gates Lloyd WMA. The crossbow season shall be open under statewide requirements.

~~(24)[(22)]~~ Marion County WMA.

(a) The crossbow, muzzleloader, and youth firearm seasons shall be open under statewide requirements.

(b) There shall be a quota hunt for:

1. Five (5) consecutive days beginning the second Saturday in November; and

2. Five (5) consecutive days beginning the Thursday following the second Saturday in November.

(c) A quota hunt participant shall not be required to check in and out of the WMA, but shall telecheck or internet-check harvested deer as specified in 301 KAR 2:172.

~~(25)[(23)]~~ Mill Creek WMA.

(a) The crossbow season shall be open under statewide requirements.

(b) The quota hunt shall:

1. Be for two (2) consecutive days beginning the first Saturday in November; and

2. Have a one (1) deer bag limit.

~~(26)[(24)]~~ Miller Welch-Central Kentucky WMA. The archery hunt shall be:

(a) On Wednesdays, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board; and

(b) December 18 through the third Monday in January.

~~(27)[(25)]~~ Mud Camp Creek WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide requirements.

~~(28)[(26)]~~ Mullins WMA. The crossbow season shall be open under statewide deer requirements.

~~(29)[(27)]~~ Ohio River Islands WMA, Stewart Island Unit.

(a) The muzzleloader season shall be for two (2) consecutive days beginning the third Saturday in October.

(b) The archery season shall be from the first Saturday in September through October 14.

(c) The crossbow season shall be from October 1 through October 14.

(d) The October youth season shall be open under statewide requirements.

(e) The remainder of the WMA shall be open under statewide requirements. ~~[(28) Otter Creek Outdoor Recreation Area.~~

~~(a) The archery and crossbow seasons shall be open under statewide requirements.~~

~~(b) There shall be a quota hunt for:~~

~~1. Two (2) consecutive days beginning the third Saturday in November; and~~

~~2. Two (2) consecutive days beginning the second Saturday in December.]~~

~~(30)[(29)]~~ Paintsville Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The crossbow and youth firearm seasons shall be open under statewide requirements.

(c) A person shall not use firearms for deer hunting on:

1. The area extending eastward from the drainage of Glade Branch, along the north edge of the lake, to the No Hunting Area surrounding Rocky Knob Recreation Area and enclosing all proper-

ty from the WMA boundary downslope to the lake edge; and

2. The islands to the south and that portion of the area extending eastward along the south edge of the lake from the drainage of Shoal Branch to the No Hunting Area surrounding the dam and ranger station, and extending downslope to the edge of the lake.

(d) A deer hunter shall not take a deer with antlers that have an outside spread [of] less than fifteen (15) inches.

~~(31)[(30)]~~ Peabody WMA.

(a) The crossbow, youth firearms, and muzzleloader seasons shall be open under statewide requirements.

(b) The modern firearm season shall be open under statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

~~(32)[(31)]~~ Pennyrile State Forest-Tradewater WMA.

(a) The crossbow season shall be open under statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) A deer hunter shall not take a deer with antlers that have an outside spread [of] less than fifteen (15) inches.

~~(33)[(32)]~~ Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a modern firearm;

(b) Shall not use an in-line muzzleloading gun;

(c) Shall not use a scope or optical enhancement; and

(d) May use a crossbow during the entire archery season.

~~(34)[(33)]~~ Dr. James R. Rich WMA.

(a) The crossbow season shall be open under statewide requirements, except during a quota hunt.

(b) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December; and

(c) The youth firearm season shall be open under statewide requirements.

~~(35)[(34)]~~ Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest.

(b) The remainder of the WMA shall be open under statewide requirements.

~~(36) Scott County WMA.~~

~~(a) The crossbow and youth firearms seasons shall be open under statewide requirements; and~~

~~(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.~~

~~(37)[(35)]~~ Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader, and youth firearm seasons shall be open under statewide requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open under statewide requirements through the end of modern firearm season.

(b) The remainder of the WMA shall be open under statewide requirements.

~~(38)[(36)]~~ South Shore WMA.

(a) The youth firearm, October muzzleloader, and modern firearm seasons shall be open under statewide requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.

(b) The archery and crossbow seasons shall be open under statewide requirements, except the area shall be closed November 15 through January 15.

~~(39)[(37)]~~ Sturgis WMA.

~~(a) The crossbow and youth firearms seasons shall be open under statewide requirements; and [area shall be closed to the statewide archery season.]~~

~~(b) There shall be a quota hunt for two (2) consecutive days beginning the second [first] Saturday in November.~~

~~(40)[(c)] There shall be an archery and crossbow quota hunt for two (2) consecutive days beginning the fourth Saturday in October.~~

~~(d) There shall be a youth quota hunt for two (2) consecutive days beginning the second Saturday in October.~~

~~(e) A deer hunter shall not take a deer with antlers that have an outside spread [of] less than fifteen (15) inches.~~

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~~(38)~~ T.N. Sullivan WMA. The crossbow season shall be open under statewide requirements.

~~(41)~~~~(39)~~ R.F. Tarter WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide requirements.

~~(42)~~~~(40)~~ Taylorsville Lake WMA.

(a) There shall be a quota hunt for:

1. Two (2) consecutive days beginning the first Saturday in November for antlerless deer;

2. Two (2) consecutive days beginning the first Saturday in December; and

3. Two (2) consecutive days beginning the first Saturday in January.

(b) Seven (7) openings shall be reserved in each quota hunt for mobility-impaired persons.

(c) The youth firearm season shall be open under statewide requirements.

(d) The crossbow season shall be open under statewide requirements.

(e) Applicants drawn for the antlerless-only quota hunt shall not lose any accumulated preference points.

~~(43)~~~~(41)~~ Twin Eagle WMA. The crossbow season shall be open under statewide requirements. ~~[(42)—Twin—Knobs Campground.~~

~~(a) The quota hunt shall be on the second Saturday in December for mobility-impaired persons.~~

~~(b) The area shall be closed to the statewide archery season.]~~

~~(44)~~~~(43)~~ Paul Van Booven WMA.

(a) The area shall be closed to vehicle access from an hour after sunset to an hour before sunrise, except that a hunter may retrieve downed game.

(b) The crossbow, muzzleloader, and youth firearm seasons shall be open under statewide requirements.

(c) There shall be a quota hunt for:

1. Five (5) consecutive days beginning the second Saturday in November; and

2. Five (5) consecutive days beginning the Thursday following the second Saturday in November.

(d) The bag limit for a quota hunt shall be one (1) deer.

(e) A quota hunt participant shall not be required to check in and out of the WMA, but shall check in a harvested deer pursuant to 301 KAR 2:172.

(f) A hunter shall not take a deer with antlers that have an outside spread ~~[of]~~ less than fifteen (15) inches.

~~(45)~~~~(44)~~ West Kentucky WMA.

(a) All tracts shall be open under statewide requirements for the archery and crossbow seasons, except that:

1. Tract 8A shall be closed to all deer hunting; and

2. All tracts shall be closed to archery and crossbow hunting during quota and firearm deer hunts.

(b) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota and open firearm deer hunts.

(c) Tract 7 and "A" Tracts shall not be open for quota or firearm deer hunts.

(d) The quota hunt shall be for five (5) consecutive days beginning the Saturday prior to Thanksgiving.

(e) The firearms season shall:

1. Be for three (3) consecutive days beginning the Saturday preceding the third Monday in January;

2. Be limited to the first 200 hunters;

3. Require a hunter to check-in at a designated check station from 4 p.m. to 8 p.m. Central Time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central Time on hunt days;

4. Shall require a hunter to check out at the designated check station:

a. When finished hunting; or

b. ~~If the hunter's bag limit is reached; or~~

c. By 7 p.m. Central time on the final day of the hunt.

5. Have ~~an unlimited~~~~a two (2)-deer~~ bag limit, only one (1) of which may be an antlered deer;

6. Have ~~additional~~~~[bonus]~~ deer permits apply; and

7. Require every person to check in during a quota hunt,~~during,~~ except for:

a. A person traveling on an established public road; or

b. A person in an area designated as open by signs.

(f) Firearm hunters shall not use centerfire rifles or handguns;

(g) A person shall not carry a firearm in posted zones pursuant to the agreement between the department and the U.S. Department of Energy.

(h) Archery hunters shall check-in with U.S. Energy Corporation security personnel before hunting on the "A" Tracts.

(i) Crossbow hunting is prohibited on the "A" Tracts.

(j) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(k) A hunter shall:

1. Sign in for the hunting tract of their choice at check-in prior to each day's hunt; and

2. Except after noon, not hunt outside of that tract.

~~(46)~~~~[shall sign in for the hunting tract of their choice and except after Noon shall not hunt outside of that tract at the check-in prior to each day's hunt.~~

~~(45)~~ Yatesville WMA. The crossbow, youth firearm, muzzleloader, and modern firearm seasons shall be open under statewide requirements, except a person shall not take antlerless deer with a firearm during the modern firearm deer season.

~~(47)~~~~(46)~~ Yellowbank WMA.

(a) The crossbow and youth firearm deer seasons shall be open under statewide requirements.

(b) A deer hunter shall not take a deer with antlers that have an outside spread ~~[of]~~ less than fifteen (15) inches.~~[(47)—Zilpe Campground.~~

~~(a) The quota hunt shall be on the second Saturday in December for mobility-impaired persons.~~

~~(b) The area shall be closed to the statewide archery season.]~~

Section 7. State Park Deer Seasons. (1) A state park may allow archery and crossbow hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(2) A state park may allow up to sixteen (16) days of firearm hunting and up to eleven (11) days of muzzleloader hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(3) The following state parks shall be open to deer hunting as specified below and according to requirements in Section 8 of this administrative regulation:

(a) Lake Barkley State Resort Park. Deer hunting shall be permitted on the second Tuesday of January for two (2) consecutive days.

(b) Greenbo Lake State Resort Park. Deer hunting shall be permitted on the second Tuesday of January for two (2) consecutive days.

(c) Green River Lake State Park.

1. Archery and crossbow deer hunting shall be permitted beginning the second Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be permitted beginning the third Thursday of December for four (4) consecutive days.

3. A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(d) Yatesville Lake State Park. Muzzleloading firearm, archery, and crossbow deer hunting shall be permitted under statewide deer requirements on the second Monday of December for three (3) consecutive days.

(e) Jenny Wiley State Resort Park.

1. Deer hunting shall be permitted on the first Saturday of January for two (2) consecutive days.

2. The bag limit shall be two (2) deer, only one (1) of which may be antlered.

3. The hunt shall be open to the first fifteen (15) mobility-impaired persons who check in at the park on the day before the hunt.

4. A person who participates in the hunt shall comply with the requirements established in 301 KAR 3:026.

5. A deer hunter shall not take an antlered deer with antlers having an outside spread~~[of]~~ less than fifteen (15) inches.

Section 8. State Park Deer Hunt Requirements. (1) Except for

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the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park, a person shall not hunt on a state park unless:

(a) Selected by a random drawing as described in Section 3 of this administrative regulation;

(b) The person is a member of a successful applicant's hunting party; or

(c) The person was selected as part of a process administered by the Department of Parks, pursuant to Section 7 of this administrative regulation.

(2) A person participating in a state park hunt, except for the quota hunts at Green River Lake State Park and the Yatesville Lake State Park open deer hunt, shall:

(a) Check in and check out as required in Section 5 of this administrative regulation;

(b) Furnish at check-in a driver's license or other form of government-issued identification; and

(c) Check in:

1. Between noon and 8 p.m. Eastern Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt; or

2. At the park the day before the hunt if hunting in the Jenny Wiley State Resort Park deer hunt; and

(d) Not be eligible to apply for a quota hunt the following year if the person does not check out as required in Section 5 of this administrative regulation.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the provisions of 301 KAR 2:172; and

(b) Check harvested deer daily at the designated park check station, except that [the] deer taken in the Green River Lake State Park quota hunts and the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park shall be telechecked or checked in on the department's website[Web-site] at fw.ky.gov, pursuant to 301 KAR 2:172.

(4) A person participating in a state park deer hunt shall not:

(a) Take more than two (2) deer in a quota hunt, only one (1) of which may be antlered;

(b) Hunt over bait;

(c) Injure a tree by using:

1. A tree stand except a portable stand;

2. Climbing devices that nail or screw to the tree; or

3. Climbing spikes;

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a firearm within 100 yards of a maintained road or building; and

(f) Hunt:

1. In an area posted as closed by signs; or

2. Outside park boundaries.

(5) A person participating in a state park deer hunt, other than the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park and any department administered state park quota hunt, may take up to two (2) bonus deer that shall not count toward their statewide limit if the person:

(a) Takes no more than one (1) bonus antlered deer; and

(b) Obtains the valid bonus deer tag(s) from the state park hunt administrators.

Section 9. Other Public Lands. (1) On Daniel Boone National Forest, Jefferson National Forest and Land Between the Lakes, a person shall not use bait, feed, minerals, or other attractants.

(2) The following areas may schedule a firearm, crossbow, or archery deer hunting season between September 1 and January 31:

(a) Big South Fork National River and Recreation Area;

(b) Clark's River National Wildlife Refuge;

(c) Daniel Boone National Forest;

(d) Jefferson National Forest;

(e) Land Between the Lakes National Recreation Area;

(f) Ohio River Islands National Wildlife Refuge; and

(g) Reelfoot National Wildlife Refuge.

(3) An area listed in subsection (2) of this section may issue a bonus permit for antlered or antlerless deer which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(4) At Land Between the Lakes, a person:

(a) Shall not take more than:

1. Two (2) deer during archery hunts; and

2. One (1) deer during quota hunts.

(b) Who is a quota deer hunter shall:

1. Apply in advance at Land Between the Lakes; and

2. Only hunt from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(c) A person who harvests a deer shall:

1. Check in the carcass pursuant to U.S. Forest Service requirements.

2. Affix a game check card pursuant to U.S. Forest Service requirements.

(5) At Reelfoot National Wildlife Refuge:

(a) Zone 1 bag limits apply during the open archery season;

(b) A person shall not take more than two (2) deer by firearm, only one (1) of which shall be antlered;

(c) A quota hunt participant shall:

1. Tag deer with a tag issued by the Refuge; and

2. Comply with the Refuge check-in requirements; and

(d) A person who is archery hunting shall:

1. Only take deer using the appropriate statewide or additional deer permit; and

2. Check harvested deer through the department's telephone or online check-in systems.

(6) At Otter Creek Outdoor Recreation Area:

(a) The archery and crossbow seasons shall be open under statewide requirements; and

(b) There shall be a quota hunt for:

1. Two (2) consecutive days beginning the third Saturday in November; and

2. Two (2) consecutive days beginning the second Saturday in December.

(7) At Twin Knobs Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December for mobility-impaired persons.

(8) At Zilpo Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December for mobility-impaired persons.

Section 10. Special Areas under Federal Control. (1) The following areas may schedule a firearm, archery, or crossbow deer hunting season between September 1 and January 31:

(a) Bluegrass Army Depot;

(b) Fort Campbell;

(c) Fort Knox;

(d) Hidden Valley Training Center; and

(e) Wendell Ford Regional Training Center.

(2) An area listed in subsection (1) of this section may issue a bonus permit for antlered or antlerless deer which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(3) Except on the Hidden Valley Training area, on the areas listed in subsection (1) of this section, a deer hunter shall:

(a) Obtain a permit from the area before hunting;

(b) Only hunt on assigned dates;

(c) Remain in assigned areas;

(d) Tag deer with tags issued on the area, unless otherwise specified in this section;

(e) Keep the area tag attached to the deer until the carcass is processed; and

(f) Check deer at a designated check station before leaving the area.

(4) At Bluegrass Army Depot, a person shall not take an antlered deer whose outside antler spread is less than fifteen (15) inches.

(5) At Fort Knox, a person shall not take an antlered deer whose outside antler spread is less than twelve (12) inches.

(6) At Hidden Valley Training Area, a person shall not use a firearm to hunt deer.

BENJY KINMAN, Deputy Commissioner,

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: January 10, 2012

FILED WITH LRC: January 11, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2012, 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 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 by February 29, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email: fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the deer hunting seasons, limits, and equipment restrictions under which deer may be taken on wildlife management areas, state parks, other public lands, and federally controlled areas.

(b) The necessity of this administrative regulation: To establish deer hunting seasons, limits, and methods of taking deer to control and manage deer populations and hunting pressure on wildlife management areas, state parks, other public lands, and federally controlled areas.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish open seasons for the taking of wildlife, regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of Chapter 150 or its regulations. KRS 150.620 authorizes the department to manage public lands for hunting and fishing. This administrative regulation establishes hunting season dates, equipment restrictions, quota hunt application procedures, and checking requirements for deer hunting on certain public lands.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by establishing guidelines for effectively managing deer herds on Wildlife Management Areas (WMAs), state parks, and other public lands, including the establishment of guidelines to ensure safe, orderly hunting practices on public lands.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes season restrictions for 4 new public hunting lands and creates a "no-hunt option" for deer quota hunts, to allow hunters to opt out of being drawn for the season without losing accumulated preference points.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide a framework for deer hunting and hunter management for WMAs and to increase hunter satisfaction with the quota hunt process.

(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: Persons who wish to deer hunt on WMAs or state parks in Kentucky will be affected. In 2010, there were 8,507 total quota hunt applicants for 4,004 available slots.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those who hunt deer on WMAs and state parks must comply with the individual hunt requirements for those sites, as listed in the fall hunting guide published by the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no direct cost to hunters as a result of this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Deer hunters will benefit from increased hunting opportunity on several public lands, the ability to preserve accumulated preference point totals, and access to four new public recreation areas.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not used because all persons who hunt deer on public areas are required to abide by these guidelines.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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' Wildlife and Law Enforcement Divisions will be affected by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 148.029, 150.025, 150.390, and 150.620.

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

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

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

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

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

Note: If specific dollar estimates cannot be determined, provide

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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 Corrections (Amendment)

501 KAR 6:270. Probation and parole policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.3104, 439.3105, 439.3107, 439.345, 439.470, 439.551, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.3105, 439.3107, 439.345, 439.470, 439.551, 439.590, 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Probation and Parole Policies and Procedures," December 16, 2011~~[September 12, 2008]~~, are incorporated by reference. Probation and Parole Policies and Procedures include:

- 27-06-02 Equal Access to Services (Added 1/12/05)
- 27-07-01 Cooperation with Law Enforcement Agencies (Added 1/12/05)
- 27-08-01 Critical Incident Planning and Reporting and Use of Force~~[and Critical Incident Reporting]~~ (Amended 12/16/11~~[12/9/08]~~)
- 27-09-01 Kentucky Community Resources Directory (Added 1/12/05)
- 27-10-01 Pretrial Diversion (Amended 4/12/05)
- 27-10-02 Mandatory Re-Entry Supervision (Added 12/16/11)
- 27-10-03 Postincarceration Supervision (Added 12/16/11)
- 27-11-01 Citizen Complaints (Amended 2/13/06)
- 27-11-02 Staff-Offender Interaction (Added 9/12/08)
- 27-12-01 Case Classification (Amended 12/16/11~~[12/9/08]~~)~~[27-12-02 Risk Scale Assessment (Amended 4/12/05)]~~
- 27-12-03 Initial Interview and Intake of New Case (Amended 12/16/11~~[Added 1/12/05]~~)
- 27-12-04 Conditions of Supervision Document and Request for Modification (Amended 12/16/11~~[Added 1/12/05]~~)
- 27-12-05 Releasee's Report Document (Added 1/12/05)
- 27-12-06 Grievance Procedures for Offenders (Amended 12/16/11~~[Added 1/12/05]~~)
- 27-12-07 Administrative Caseloads (Added 12/16/11)~~[27-12-08 Supervision Planning (Amended 4/12/05)]~~
- 27-12-11 Guidelines for Monitoring Financial Obligations (Amended 12/16/11~~[4/12/05]~~)
- 27-12-13 Community Service Work (Added 1/12/05)
- 27-12-14 Offender Travel (Amended 12/16/11~~[9/12/08]~~)
- 27-13-01 Drug and Alcohol Testing of Offenders (Amended 12/16/11~~[4/12/05]~~)
- 27-14-01 Interstate Compact (Amended 12/16/11~~[4/12/05]~~)
- 27-15-01 Investigating and Reporting Violations and Unusual Incidents (Amended 12/16/11)~~[Supervision Reporting Documents, Violations and Unusual Incidents (Added 1/12/05)]~~
- 27-15-03 Graduated Sanctions and Discretionary Detention (Added 12/16/11)
- 27-16-01 Search, Seizure, and Processing of Evidence (Amended 12/9/08)
- 27-17-01 Absconder Procedures (Amended 4/12/05)
- 27-18-01 Probation and Parole Issuance of Detainer or Warrant (Amended 4/12/05)

- 27-19-01 Preliminary Revocation Hearing (Amended 12/16/11~~[4/12/05]~~)~~[27-20-02 Prisoner Intake Notification (Added 1/12/05)]~~
- 27-20-03 Parole Compliance Credit (Amended 12/16/11) ~~[Prisoner Status Change (Added 1/12/05)]~~
- 27-21-01 Apprehension of Probation and Parole Violators (Amended 12/16/11~~[12/9/08]~~)
- 27-23-01 In-state Transfer (Added 1/12/05)
- 27-24-01 Releasing Offender from Active Supervision (Amended 12/16/11~~[Added 1/12/05]~~)
- 27-24-02 Reinstatement of Offenders to Active Supervision (Added 1/12/05)
- 27-26-01 Assistance to Former Offenders and Dischargees (Amended 2/13/06)
- 27-30-01 Sex Offender Registration (Amended 12/16/11~~[12/9/08]~~)
- 27-30-02 Sex Offender Supervision (Amended 12/16/11~~[12/9/08]~~)
- 27-32-01 Student Intern Program (Amended 12/14/05)
- 27-32-02 Community Based Volunteer Citizen Involvement (Amended 2/13/06)
- 28-01-01 Probation and Parole Investigation Reports,~~[Introduction, Definitions,]~~ Confidentiality, Timing, and General Comments (Amended 12/16/11~~[4/12/05]~~)
- 28-01-02 Probation and Parole Investigation Documents (Administrative Responsibilities) (Amended 12/16/11~~[Added 1/12/05]~~)
- 28-01-03 Presentence, Postsentence, and Other Investigative Reports (Amended 12/16/11)~~[Supplemental and Partial Investigations (Added 1/12/05)]~~
- 28-01-08 Calculation of Custody Time Credit (Amended 12/16/11)~~[Probation and Parole Investigation Reports, Partial Investigation Reports and Submissions Schedule (Amended 4/12/05)]~~
- 28-01-09 Release of Information of Factual Content on Presentence or Postsentence Investigation Documents (Added 1/12/05)
- 28-03-01 Parole Plan Investigation, Half-way Houses and Sponsorship (Amended 12/16/11)~~[Parole Planning, investigation request, halfway houses, Parole Officer to monitor employment search and sponsorship (Amended 4/12/05)]~~
- 28-03-02 Release on Parole (Amended 12/16/11)~~[Expedient Release Parole Planning investigative request (Added 1/12/05)]~~
- 28-04-01 Furlough Verifications (Added 1/12/05)

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

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: December 16, 2011

FILED WITH LRC: December 16, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2012 at 9:00 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. 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 attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 29, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safe-

ty Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker (502) 564-3279

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes policies and procedures relating to supervision of probation and parole offenders.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 196.037, 196.070, 196.075, 439.3101, 439.3104, 439.3105, 439.345, 439.470, 439.480, 439.551, and 439.552.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation updates policy and procedures and adds language to address new legislative requirements in HB 463 of the 2011 legislative session. The regulation establishes policies and procedures relating to supervision of probation and parole offenders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes policies and procedures relating to supervision of probation and parole offenders and provides clear direction and information to probation & parole employees in the supervision of offenders.

(2) If 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 revise policies and procedures for probation and parole, adds language to address legislative requirements in HB 463, and makes revisions to comply with American Correctional Association (ACA) standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 439.3101, 439.3104, 439.3105, 439.345, 439.470, 439.551, and 439.552.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment promulgates regulations required by HB 463. The Department is authorized to implement or amend practices or procedures to ensure the safe and efficient operation of the Division of Probation & Parole.

(d) How the amendment will assist in the effective administration of the statutes: This will assist the Division of Probation & Parole in operating more efficiently by enhancing supervision strategies, providing methodology for identifying offender programming needs, and adopting the most effective programming and intervention practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the 684 Kentucky Department of Corrections Division of Probation and Parole employees, 41,000 offenders, and 120 releasing courts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Probation and parole officers will have to learn new procedures to comply with statutory and regulatory changes. The Department will provide additional training to staff and make changes to the offender management system. Offenders' supervision will be focused on criminogenic needs with targeted interventions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes that were necessitated by the HB 463 together with the amendment to this regulation include \$1.2 million to update the offender management system. It is anticipated that there will be 54 more staff needed to operate under the changes in HB 463 and this administrative regulation, at an approximate cost of \$3.6 million for FY13. This staffing amount includes officers to supervise an increase of 1300-1500 offenders released to mandatory re-entry supervision in 2012.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Offenders will benefit from efficient probation and parole supervision and more streamlined supervision processes. The Division of Probation & Parole will allocate resources to supervision services, interventions, and strategies according to nationally set best practices.

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

(a) Initially: The costs incurred stem initially from the legislative changes and this regulation amendment implements those legislative changes. Initial costs include \$1.2 million to update the offender management system. A staffing increase of 54 more staff has been requested for FY13, at an approximate cost of \$3.6 million. This includes infrastructure and equipment costs as well as \$467,600 for additional costs in leased office space. Additionally, an annual training cost per officer of \$411 will total \$22,000 for these new staff.

(b) On a continuing basis: The Division is requesting an additional 34 staff in FY14 at a cost of \$2.1 million, plus the on-going cost of maintaining the additional staff hired in FY13, estimated at \$3.5 million. Additionally there are training and equipment costs for existing staff, estimated in the amount of \$240,602 for FY14.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds and additional funds will need to be allocated by the legislature to fully implement the requirements of HB 463.

(7) Provide an assessment of whether an 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 costs incurred stem initially from the legislative changes and this regulation amendment implements those legislative changes. Additional funds will need to be allocated by the legislature to fully implement the requirements of HB 463.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation establishes uniformity in the supervision fee paid by Interstate Compact offenders being supervised in Kentucky, in accordance with Interstate Compact requirements. The regulation also sets an amount for drug testing fees for offenders on probation and parole supervision.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky Department of Corrections.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 196.037, 196.070, 196.075, 439.310, 439.3101, 439.3104, 439.3105, 439.345, 439.470, 439.480, 439.551, and 439.552.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (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 releasing authority sets fees for most offenders. This regulation sets supervision fees for Interstate Compact offenders, which is estimated to generate approximately \$201,450 annually. These fees are allocated to the Kentucky general fund. This regulation also sets fees for drug testing required for offenders on supervision. In FY 2011, the Division collected \$1.5 million in drug testing fees.

Drug testing fees collected are allocated to Department of Corrections restricted funds.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is anticipated that the amount collected will be similar for subsequent years.

(c) How much will it cost to administer this program for the first year? No new program is created. The costs incurred for the regulation stem initially from the legislative changes and this regulation amendment implements those legislative changes. A staffing increase of 54 more staff has been requested for FY13, at an approximate cost of \$3.6 million. This includes infrastructure and equipment costs as well as \$467,600 for additional costs in leased office space. Additionally, an annual training cost per officer of \$411 will total \$22,000 for these new staff.

(d) How much will it cost to administer this program for subsequent years? The Division is requesting an additional 34 staff in FY14 at a cost of \$2.1 million, plus the on-going cost of maintaining the additional staff hired in FY13, estimated at \$3.5 million. Additionally there are training and equipment costs for existing staff, estimated in the amount of \$240,602 for FY14.

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:

**TRANSPORTATION CABINET
Department Of Vehicle Regulation
Division Of Motor Carriers
(Amendment)**

601 KAR 1:018. Special overweight or overdimensional motor vehicle load permits.

RELATES TO: KRS 175.450, 177.390-177.570, 177.9771, 186.010(8), 186.050, 189.221, 189.2225(3), 189.270, 189.2715, 189.2717, ~~281.752,~~ 281.838, 23 C.F.R. 658.17, 49 C.F.R. 367, 393.11

STATUTORY AUTHORITY: KRS 189.270(6), 189.271(9)(b), 189.2715(1), 189.2717(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.270(6), 189.271(9)(b), 189.2715(1), and 189.2717(1) authorize the Secretary of the Kentucky Transportation Cabinet to issue permits for the movement of motor vehicles with divisible or nondivisible loads exceeding legal weights or dimensions. This administrative regulation establishes the procedures and requirements for the issuance of an overweight or overdimensional permit. ~~[It exempts certain farm implement movements from the requirements of obtaining an overdimensional permit, but retains the associated safety requirements.]~~

Section 1. Definitions. (1) "Axle spacing" means the measurable distance between the axle centers of the axle unit.

(2)(4) "Boat" means a vehicle used for movement on the water and includes the trailer on which it is placed for transporting the vehicle on the highway.

(3) "Cosigner" means a shipper of goods.

(4) "Cosigner" means a recipient of goods.

(5)(2) "Divisible load" means a load that if divided, dismantled, disassembled, or rearranged would no longer be overweight or overdimensional.

(6)(3) "Dual-wheel axle" means one (1) axle with two (2) wheels on each side of the axle. ~~[(4) "Farm implement or equipment" means machinery, equipment, or vehicle used exclusively in a farm or agriculture operation including those farm implements in KRS 186.010(8)(a) that are not required by to be registered.]~~

(7)(5) "Fully-controlled access highway" means a highway that:

(a) Gives preference to through traffic;

(b) Has access only at selected public roads or streets; and

(c) Has no highway grade crossing or intersection.

(8)(6) "Height pole" means a vertical clearance measuring device.

(9) "International Bill of Lading" means a receipt or ticket for property tendered for transportation by a common motor carrier or private carrier in foreign commerce containing the following information:

(a) Cosignor;

(b) Cosignee;

(c) Origin and destination points;

(d) Number of packages;

(e) Description of freight or goods; and

(f) Date.

(10)(6) "Nondivisible load" means a load or vehicle, ~~that~~ which if separated into smaller loads or vehicles would:

(a) Compromise the intended use of the vehicle, making it unable to perform the function for which it was intended;

(b) Destroy the value of the load or vehicle, making it unusable for its intended purpose; or

(c) Require more than eight (8) work hours to dismantle using appropriate equipment.

(11)(7) "Overdimensional" means the motor vehicle exceeds the dimension limits established ~~in set forth in~~ 603 KAR 5:070.

(12)(8) "Overweight" means the motor vehicle exceeds:

(a) The gross weight limit established in 603 KAR 5:066;

(b) The axle weight limit established in 603 KAR 5:066;

(c) The gross weight limits established by KRS 177.9771 for a motor vehicle transporting coal or coal by-products;

(d) The bridge weight limit established by 603 KAR 5:066; or

(e) The gross weight limit posted at a bridge or other structure.

(13)(9) "Permit fee" means the fee established in KRS 189.270, 189.2715, or 189.2717 for the issuance of an overweight or overdimensional trip or annual permit, to cover the cost of processing the permit application, including:

(a) A qualification check of the applicant;

(b) A statutory compliance check; and

(c) An initial bridge and weight analysis.

(14)(40) "Pole trailer" means a motor vehicle without motive power that is:

(a) Designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle; and

(b) Used for transporting long or irregularly shaped loads such as poles, pipes, or structural members that generally are capable of sustaining themselves as beams between the supporting connections.

(15) "Sealed, containerized, ocean-going cargo unit" means a nondivisible unit of cargo that is part of international trade due to importation from, or exportation to another country.

(16)(44) "Single-wheel axle" means one (1) load bearing axle with one (1) wheel on each side of the axle.

(17) "Steering Axle" means the axle or axles of a vehicle or combination of vehicles by which the vehicle or vehicles are guided or steered.

(18) "Tandem" means any two (2) axles with centers forty two (42) inches or more apart but less than ninety six (96) inches apart.

(19) "Tridem" means any three (3) consecutive axles with centers forty two (42) inches or more apart and less than 120 inches apart.

(20)(42) "Toll road" means any project constructed under the provisions of KRS Chapter 175.450 or KRS 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet.

(21) "Trunnion axle" means an axle configuration with two individual axles mounted in the same transverse plane with four (4) tires on each axle connected at a pivot point that allows each individual axle to oscillate in a vertical plane to provide constant and equal weight distribution on each individual axle.

(22)(43) "Utility equipment" means the specialized equipment, including earth-moving equipment, necessary for the installation or operation of utility poles or pipes, transformers, regulators, or other utility electrical field equipment. It does not include any equipment necessary for the construction or operation of a power generation station.

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Section 2. Permit Application. (1) An applicant for an overweight or overdimensional single trip permit shall submit a completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10 to the Division of Motor Carriers.

~~(2)[(4)] An applicant for an overweight or overdimensional annual[or single trip] permit shall submit[to the Division of Motor Carriers] a completed Application for Annual Overweight or Overdimensional Permit, TC Form 95-25 to the Division of Motor Carriers[or a completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10 for a single trip permit].~~

(3) An application for a single trip or annual permit shall be submitted to the Division of Motor Carriers by:

(a) Hand delivery;

(b) Mail;

(c) Fax; or

(d) The online motor carrier permitting system.

~~(4) A permit application shall contain the following:~~

~~(a) A detailed description of the equipment or load to be moved;~~

~~(b) A description and vehicle identification number of the power unit moving the equipment;~~

~~(c) Registration weight and license plate number of the power unit;~~

~~(d) The carrier's name, telephone number, and address;~~

~~(e) Routes requested for travel; and~~

~~(f) The period of time requested for travel[.];~~

(4) A single trip permit shall be valid for:

(a) One (1) move; and

(b) A duration of ten (10) days.[1. A single trip shall be ten (10) days or less; or 2]

(5) An annual permit shall be valid for 365 days from date of issue.

(6)[(2)] A single trip permit application or request shall specify the following:

(a) The year,[and] make, and vehicle identification number of the towing vehicle;

(b) The towing vehicle's license plate number;

(c) The maximum weight for which the vehicle is registered;

(d) The state of registration of the vehicle;

(e) The name,[and] address, and telephone number of the owner;

(f) The dates of travel;

(g) The serial number for a manufactured home;[and]

(h) The specific routes of travel requested; [-]

(i) A detailed description of the equipment or load to be moved;

(j) The Kentucky Highway Use License (KYU License) or the DOT number; and

(k) Axle spacing.

(3) If the towing vehicle for which a single trip permit is being requested is registered in a state other than Kentucky, the vehicle shall be either:

(a) Apportioned registered to operate in Kentucky; or

(b) In compliance with KRS 281.838[KRS 281.752].

(4) An annual permit application or request shall specify the following information relating to the motor vehicle:

(a) Year and make;

(b) Vehicle identification number;

(c) License plate number and unit number;

(d) The maximum weight for which it is registered;

(e) The state of apportioned registration, if not registered in Kentucky;

(f) Name,[and] address, and telephone number of the motor carrier operating or the owner of the towing vehicle;

(g) If the motor carrier operating the towing vehicle is a for-hire or private carrier; [and]

(h) A general description of cargo;[-]

(i) Axle spacing; and

(j) The Kentucky Highway Use License (KYU License) or the DOT number.

(5) If the towing vehicle issued an annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky.

(6) Special annual or trip permits to allow the movement of motor vehicles with gross weights or gross dimensions in excess of

the weights and dimensions specified by statute and administrative regulation shall be issued by the Division of Motor Carriers if the movement is necessary to provide transportation for specified cargo in the interest of the health, welfare, or economy of the people.

(7) Each trip or annual permit issued shall be limited to designated portions of the state primary road system and stated periods of time.

(8) A separate permit shall be required for each vehicle involved in a movement.

(9) A permit shall not be issued for a divisible load that if reasonably divided, dismantled, disassembled, or rearranged would no longer be overweight or overdimensional except as provided by KRS 189.2715 or 189.2717.

(10) An overweight permit shall not be issued to the following:

(a) A Kentucky licensed vehicle with a gross weight exceeding that for which the truck is registered unless registered for 80,000 pounds (36,287.36 kilograms);

(b) A tractor-trailer combination of less than five (5) axles;

(c) A vehicle not registered in Kentucky, unless it has met one (1) of the following conditions:

1. The vehicle has been apportioned registered by another jurisdiction to operate in Kentucky at 80,000 pounds (36,287.36 kilograms); or

2. The vehicle has met the provisions of KRS 281.838[KRS 281.752];

(d) A vehicle whose axle weight would exceed the product of 700 pounds (317.51 kilograms) times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle; or

(e) A towing vehicle whose horsepower or braking capacity is not adequate to safely transport the overdimensional or overweight load.

(11) The cabinet shall further restrict the movement or deny the permit for a movement that may cause damage to property or that may be detrimental to public safety and convenience.

(12) An annual permit shall not be issued if the vehicle is licensed with a limited or restricted registration as identified in KRS 186.050(8) and (9) for Kentucky-based vehicles.

Section 3. Height. (1) A vehicle and load with a height in excess of thirteen (13) feet, six (6) inches shall obtain a single-trip overdimensional permit pursuant to KRS 189.270(2) prior to movement.

(2) The maximum height for each single-trip overdimensional permit shall be determined by the cabinet based upon underpass and bridge height along the designated route.

Section 4. Weight. (1) Gross or axle overweight shall not be permitted:

(a) On a combination unit of less than five (5) axles; or

(b) On a single unit except off-road equipment such as a road grader, mobile crane, or other self-propelled unit.

(2) A vehicle shall not be issued an overweight permit that does not have a declared gross weight of at least 80,000 lbs.

(3) The weight on any single axle in any combination shall not exceed the product of 700 pounds times the aggregate width in inches established by the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single wheel axle - 24,000 pounds;

(b) Steering axle - 20,000 pounds;

[c][f)] Tandem dual-wheel axle group if the combination vehicle has only five (5) axles total - 45,000 pounds[(minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group)];

[d][g)] Tridem dual-wheel axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds[(minimum of forty-two (42) inches spacing between the center of each of the axles of the tridem axle group)];

[e][h)] Tridem dual-wheel axle group - 60,000 pounds[(minimum of forty-two (42) inches spacing between the center of each of the axles of the tridem axle group)];

[f][i)] Five (5) axle combination units not exceeding 96,000 pounds gross weight;

~~(g)(ff)~~ Six (6) axle combination units not exceeding 120,000 pounds gross weight;~~or~~

~~(h)(g)~~ Seven (7) axle combination units not exceeding 160,000 pounds gross weight;~~or~~]

(i) Trunnion axle group maximum gross weight as determined by the formula established in 603 KAR 5:066 Section 2(7).

(4) Maximum weights shall not be permitted unless all bridges and roads on the moving route have sufficient capacity to accommodate the load.

(5) A self propelled truck crane shall not exceed the following axle, axle group weights, or gross weight:

(a) Single wheel axle, 23,000 pounds;

(b) Tandem dual-wheel axle group, 46,000 pounds; and

(c) Tridem dual wheel axle group, 69,000 pounds.

(6) The maximum gross weight for a four (4) axle self propelled truck crane is 92,000 pounds.

(7) The maximum gross weight for a five (5) axle self propelled truck crane is 115,000 pounds.

Section 5. Responsibility of Permit Holder. (1) Any damage to the highway, signs, guardrails, or other public or private property caused by the transportation of the specialized equipment shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair.

(2) A permit holder shall not cut, trim, remove, or relocate any tree, shrub, guardrail, highway sign, or other object~~on the highway right-of-way~~ without the written approval of the landowner or the chief district engineer or their designee in the district office where the property is physically located.

(3) The applicant shall be responsible for providing accurate information and reviewing the permit prior to travel on Kentucky highways.

Section 6. Permit Availability. (1) A valid permit~~The annual permit~~ issued by the Division of Motor Carriers shall be carried in the overweight or overdimensional vehicle at all times.~~(2) A valid single trip permit shall be carried in the overweight or overdimensional vehicle or equipment at all times.~~

~~(2)(3)~~ A valid annual or single trip permit shall be presented upon request to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

~~(3)(4)~~ An annual permit not authenticated by the Division of Motor Carriers shall not be valid.

Section 7. Duplicate Permits. (1) A duplicate permit that is needed to replace a lost, stolen, or destroyed annual permit or to transfer the permit to another towing vehicle shall be obtained from the Division of Motor Carriers by a payment of ten (10) dollars.

(2) One (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year.

(3) An additional transfer of the annual permit requested shall be subject to the fees established in KRS 189.270.

(4) The original permit shall be returned to the Division of Motor Carriers prior to the transfer of an annual permit.

Section 8. Travel Restrictions. (1)~~(a)1. A single trip permit shall be valid for ten (10) days.2.~~ A time extension shall only be granted if the permit holder proves extenuating circumstances, such as weather, fire, natural disaster, or unforeseen emergency.~~(b) An annual permit shall be valid for 365 days from date of issuance.~~

(2)(a) As needed for public safety, the department shall further prohibit movements in congested areas within the peak traffic hours.

(b) The additional restrictions shall be noted on the permit upon issuance.

(3) Overdimensional restrictions shall not prohibit a utility company from working in an emergency situation to restore utility service to an area otherwise experiencing an outage.~~Section 9. Farm Implements. (1) Unless the movement occurs on an interstate highway, toll road, or fully-controlled access highway, a permit shall not be required for transport of overdimensional farm implements from:~~

~~(a) One (1) farm to another;~~

~~(b) A farm to a repair shop or dealer; or~~

~~(c) A repair shop or dealer to a farm.~~

~~(2) A permit holder or other operator moving overdimensional farm implements shall comply with the safety requirements set forth in this administrative regulation.~~

~~(3) The following movements of farm implements shall be made under the authority of an overdimensional permit:~~

~~(a) Manufacturer to dealer;~~

~~(b) Dealer to manufacturer;~~

~~(c) Dealer to dealer; or~~

~~(d) Moves on an interstate highway, toll road, or fully-controlled access highway.~~

~~(4) On an interstate highway or toll road a self-propelled farm implement shall not be:~~

~~(a) Operated; or~~

~~(b) Issued a permit for movement.~~

~~(5) A self-propelled farm implement shall be issued a single trip or annual permit to operate fully-controlled access highway where its movement;~~

~~(a) Shall not create an unreasonable impedance of the flow of traffic; and~~

~~(b) Is accompanied by escorts as established in Section 11 of this administrative regulation.~~

~~(6) If the farm equipment to be transported exceeds twelve (12) feet in width the farm equipment dealer who holds the annual permit shall, prior to the proposed move, survey the entire route proposed to confirm the roads are adequate to safely accommodate the load.~~

~~(7) If there is any doubt of the adequacy of the highway to safely accommodate the overdimensional farm equipment the farm equipment dealer shall:~~

~~(a) Select a different route; or~~

~~(b) Contact the Division of Motor Carriers for clearance to move the equipment over that specific route.~~

~~(8) If the Division of Motor Carriers does not issue clearance for the use of a particular route whose adequacy is in doubt, that route shall not be used.]~~

Section 9 Escort Vehicle Safety Requirements.~~Section 10. Escort Vehicle, Safety and Flag Requirements.] (1) The provisions of this section shall not apply if the vehicle or equipment is less than twelve (12) feet wide and [the vehicle equipment is]:~~

(a) Used in part for off-road use;

(b) Not required to be registered or licensed; and

(c) Not transporting cargo.](44)

(2)(4) Required escort vehicles shall accompany the overdimensional vehicle at a distance of 300 feet (91.44 meters) on open highways unless it is necessary to travel at a distance closer or farther away from the vehicle accompanied due to safety or road conditions.[and shall:]

(3) An escort vehicle shall:

(a) Maintain radio contact with the load;

(b) Post appropriate signs on the vehicle;

(c) Have amber strobe lights or flashing lights on the escort vehicle; and

(d) Keep its headlamps lit at all times.

(e) Use a height pole if the escorted load is fifteen (15) feet or greater.](2) In cities or congested areas, the escort shall travel at a distance closer than 300 feet as necessary to protect other traffic.]

(4) One (1) lead escort is required for:

(a) A vehicle and load with a width in excess of ten (10) feet, six (6) inches (three and two-tenths (3.2) meters), but twelve (12) feet (3.66 meters) or less in width travelling on a two (2) lane highway;

(b) A vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters), but not more than eighty-five (85) feet (25.91 meters);

(c) Utility equipment, a pole, or pipe being transported that exceeds fifty-five (55) feet (16.76 meters) in length.

(5) One (1) trail escort is required for:

(a) A vehicle and load with a width exceeding twelve (12) feet (3.66 meters) that does not maintain a speed of forty-five (45) miles per hour (72.42 kilometers per hour) on a highway that is four (4) lanes or wider;

(b) A vehicle and load traveling on a two (2) lane highway at speeds below the posted speed limit on its route;

(c) A vehicle and load with a length of 120 feet or less traveling on a four (4) lane or wider highway.

(6) One (1) lead and one (1) trail escort is required for:

(a) A vehicle and load with a length in excess of eighty-five (85) feet (25.91 meters) traveling on a two (2) lane highway;

(b) A vehicle and load with a width exceeding twelve (12) feet (3.66 meters) on a two (2) lane highway;

(c) A vehicle and load with a length in excess of 120 feet traveling on a four (4) lane or wider highway. [(3) On a two (2) lane highway, a vehicle and load with a width in excess of ten (10) feet, six (6) inches (three and two-tenths (3.2) meters) but twelve (12) feet (3.66 meters) or less shall have one (1) lead escort.

(4) On a two (2) lane highway, a vehicle and load with a width exceeding twelve (12) feet (3.66 meters) shall have one (1) lead escort and one (1) trail escort.

(5) On a two (2) lane highway, a vehicle and load traveling at speeds below the average driving speed of traffic on its route shall have one (1) trail escort.

(6) On a highway that is four (4) lanes or wider, a vehicle and load shall have one (1) trail escort if:

(a) Its width exceeds twelve (12) feet (3.66 meters); or

(b) It does not maintain a speed of forty-five (45) miles per hour (72.42 kilometers per hour).

(7) On a two (2) lane highway:

(a) A vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters) but not more than eighty-five (85) feet (25.91 meters) shall have one (1) lead escort; and

(b) A vehicle and load with a length in excess of eighty-five (85) feet (25.91 meters) shall have one (1) lead and one (1) trail escort.

(8) On a four (4) lane or wider highway:

(a) A vehicle and load with a length of 120 feet shall have one (1) trail escort; and

(b) A vehicle and load with a length of over 120 feet shall have a front and rear escort.]

Section 10. Flag and Sign Requirements for Escort Vehicles.

[(1)](9)] Red or orange fluorescent flags that are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.

(a) A vehicle operating overwidth shall display four (4) warning flags; one (1) at each of the four (4) corners and if any portion of the load extends beyond the four (4) corners, additional flags shall be displayed at the widest points of the load.

(b) A vehicle operating overlength or with a rearend overhang shall display two (2) warning flags located to indicate maximum width at the extreme rear of the vehicle or load.

[(2)](4)] A vehicle exceeding ten (10) feet, six (6) inches, three and two-tenths (3.2) meters in width or having front overhang shall display two (2) warning signs. [The warning signs shall:]

(a) A warning sign shall be six (6) to eight (8) feet in width stating "OVERSIZE LOAD in black letters on a yellow background.

(b) The black letters shall be eighteen (18) inches high (11,612.7 millimeters) with a brush stroke of one and four tenths (1.4) inches (35.56 millimeters).

(c) A warning sign shall be mounted on a lead escort vehicle so that it is visible to oncoming traffic. [State in black letters using a brush stroke of one and four tenths (1.4) inches (35.56 millimeters) on a yellow background, "OVERSIZE LOAD";

(b) Not be less than seven (7) feet (2.13 meters) long and eighteen (18) inches (0.46 meters) high; and]

[(d)](c)] A warning sign shall be fastened:

1. At the front of the power unit;[,] or

2. At the rear[end] of the towed unit;[,] or

3. At the rear of the load. [(14) (a) If the utility equipment, pole, or pipe being transported exceeds fifty-five (55) feet (16.76 meters) in length, a front escort shall accompany the vehicle required to be permitted.]

[(3)](b)] If a[the] front overhang exceeds ten (10) feet (3.05 meters), an amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use any time the

power unit is in operation.

[(4)](a)](42)] The lighting devices and reflectors established in [set forth in] 49 C.F.R. 393.11 for pole trailers and projecting loads shall be required. [(b) A lamp or light shall be used while a vehicle is on or beside a highway.]

[(b)](c)] A front overhang on a combination vehicle shall be prohibited.

[(5)](43)] As a special provision of the permit and due to safety considerations, the Division of Motor Carriers may require additional escort vehicles, lighting, or warning flags. [(14) The provisions of this section shall not apply if the vehicle or equipment is less than twelve (12) feet wide and the vehicle equipment is:

(a) Used in part for off-road use;

(b) Not required to be registered or licensed; and

(c) Not transporting cargo.]

Section 11. House or Building Permits. (1) An application for a permit to move a house or building shall be made on House Moving Application, TC Form 95-310, and submitted to the Division of Motor Carriers via mail, hand delivery, or the motor carrier online permitting system at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4 p.m., or via fax at (502) 564-0992.

(2)(a) House moving permits shall be issued for movements that occur during off-peak traffic hours.

(b) The mover shall furnish all escorts and flagmen required to protect the public.

(3) A permit shall not be issued for the movement of a permanent building other than a portable storage unit on a parkway or an interstate highway.

(4)(a) The Division of Motor Carriers shall contact the appropriate Department of Highways' district office for specific routing restrictions or local highway conditions prior to the issuance of a permit.

(b) Specific restrictions shall be identified on the permit and deviation from the restrictions shall void the permit.

Section 12. Route Deviation. All vehicles transporting a load under an annual or trip permit shall obtain prior written approval from the Division of Motor Carriers for any deviation from the routes approved by the Transportation Cabinet for the towing vehicle.

Section 13. Permit Required. Until an authorized permit has been issued by the Division of Motor Carriers under the provisions of this administrative regulation and KRS 189.270:

(1) An overweight or overdimensional load of a width greater than eight and one-half (8 1/2) feet shall not be towed on any state-maintained highway;

(2) An overweight or overdimensional load with a width greater than eight (8) feet shall not be towed on any state-maintained highway not included on the Transportation Cabinet's list of roads approved for passage of motor vehicles with increased dimensions pursuant to 603 KAR 5:070, except as provided in KRS 189.2225(3); and

(3) A manufactured home with a combined length of manufactured home and towing vehicle greater than 120 feet shall not be towed upon any Kentucky highway. The manufactured home shall not exceed eighty-five (85) feet in length.

Section 14. Annual Permits. (1)(a) A permit shall not be issued for the movement of an overweight or overdimensional load in excess of sixteen (16) feet in width inclusive of the usual overhang.

(b) Mirrors on a towing vehicle shall not be considered in determining the width of an overweight or overdimensional load.

(2) Prior to a movement of an overweight or overdimensional load under the provisions of an annual permit, the permit holder shall evaluate the entire route proposed to be used for the movement of the overweight or overdimensional load. The evaluation shall include the following:

(a) Highway width;

(b) Shoulder width and surface type;

(c) Bridge width and posted weights;

- (d) Curves;
- (e) Turns to be negotiated;
- (f) Construction zones;
- (g) Obstructions;
- (h) Access control;
- (i) Traffic volume; and
- (j) Other routes available that may be safer even if not as convenient.

(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overweight or overdimensional load.

(4) If there is any doubt about the adequacy of the highway to safely accommodate the overweight or overdimensional load, the permit holder shall either:

- (a) Select a different route; or
- (b) Contact the Division of Motor Carriers for approval to move the overweight or overdimensional load over that specific route.

(5) An annual permit shall not be issued or used for the movement if the height of the combination load and towing vehicle exceeds thirteen (13) feet, six (6) inches.

(6) Acceptance and use of the annual permit shall indicate the permit holder's acceptance of the liability associated with the move.

(7) Moves of overweight or overdimensional loads more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the Division of Motor Carriers. The cabinet shall deny movements on a route unsuitable for move. ~~[(9) The issuance cost of an annual and trip permit shall be that established by KRS 189.270.]~~

Section 15. Traffic Control. (1) If an overweight or overdimensional load while crossing a bridge would encroach on any other lane of traffic:

- (a) All approaching traffic shall be stopped; and
- (b) All trailing traffic shall be prevented from attempting to pass the overweight or overdimensional load until the load has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.

(2) An overweight or overdimensional load shall slow the movement of other traffic as little as possible. If traffic backs up behind the load being moved, the escort vehicles and load shall exit the highway if there is sufficient space to do so.

Section 16. Permit Validity. (1) Any vehicle hauling building materials to a home or home site shall be allowed to travel fifteen (15) miles off of any state highway classified to carry the registered weight of the vehicle for purpose of delivery.

- (a) The vehicle shall:
 - 1. Not be required to have a permit for overweight or overlength; and
 - 2. Be within the limits of the registration and within axle weight limits.

(b) An operator shall be required to provide a bill of lading while engaged in the transportation of home building materials.

(2)(a) Travel on all overweight and overdimensional permits shall not be permitted in Boone, Kenton, Campbell, Fayette, Jefferson County (Louisville) or at the Owensboro, Kentucky 2155 bridge from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday.

(b) An overweight or overdimensional load originating in Fayette County shall be exempt from traffic rush hour restrictions on Interstate 64 and Interstate 75 in Fayette County and on connecting routes to both interstates up to a distance of three (3) miles from the interstates.

(3) If proof of an emergency is furnished to the Division of Motor Carriers, moves shall be authorized during the hours restricted pursuant to KRS 189.270(11)(a). ~~[(4) The provisions of this section shall not apply to a farm implement or equipment as defined in Section 1(4) of this administrative regulation if the farm implement or equipment:~~

- ~~(a) Is less than twelve (12) feet wide;~~
- ~~(b) Is used in part for off-road use; and~~
- ~~(c) Is not transporting cargo.]~~
- (5) Travel shall not be made in excess of the posted limitations

on any bridge or other highway structure.

Section 17. Weather Conditions. (1) Moves of overdimensional loads more than twelve (12) feet wide shall not be made on any highway if a wind advisory has been issued by the National Weather Service ~~[wind velocity exceeds twenty-five (25) MPH]; or~~

(2) If adverse weather conditions or road conditions would cause these moves to be dangerous.

Section 18. Brakes. (1) The number, type, size, and design of brake assemblies required to assist the towing vehicle in controlling and stopping a manufactured home or boat shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour shall not exceed forty (40) feet.

(2) Manufactured homes that are not equipped with brakes on all axles shall certify that the towing unit has sufficient brake assemblies to meet the braking distance specified in this section. Certification shall be in the form of:

- (a) A manufacturer's statement;
- (b) Documented technical data; or
- (c) An engineering analysis or its equivalent stating that the braking distance has been met.

(3) The certification shall be carried in the towing unit at all times and shall be presented upon request to any law enforcement officer.

~~[Section 19. Annual Farm Equipment Permits. (1) An annual permit shall not be issued for the movement of the following:~~

~~(a) Self-propelled farm equipment that exceeds thirteen (13) feet eleven (11) inches in width;~~

~~(b) A motor vehicle transporting farm equipment if the vehicle or load exceeds thirteen (13) feet eleven (11) inches in width unless the transporter is a farm equipment dealer transporting farm equipment from the dealership to a farm or from a farm to the dealership;~~

~~(c) A motor vehicle transporting farm equipment that exceeds sixteen (16) feet in width;~~

~~(d) Farm equipment if the length of the trailer and towing unit combined exceeds ninety-five (95) feet in length;~~

~~(e) Farm equipment if the length of the straight truck and load exceeds fifty-five (55) feet; or~~

~~(f) A motor vehicle transporting farm equipment if the power unit does not have sufficient horsepower or braking capacity to safely handle the load being transported.~~

~~(2) A permit for the movement of farm equipment with a width greater than twelve (12) feet but not exceeding sixteen (16) feet shall only be:~~

- ~~(a) Issued to a farm equipment dealer; and~~
- ~~(b) Valid if the farm equipment is transferred from a dealership to a farm or from a farm to a dealership.~~

~~(3) A motor vehicle for which a permit is issued to a farm equipment dealer to transport farm equipment with a width greater than thirteen (13) feet eleven (11) inches shall be:~~

- ~~(a) Titled, registered, and licensed in Kentucky; or~~
- ~~(b) Apportioned licensed in another jurisdiction to operate in Kentucky.]~~

Section 19[Section 20]. Permits for Sealed, Containerized, Ocean-going Cargo Units. (1) A vehicle moving a sealed, containerized, ocean-going cargo unit shall be eligible for a single trip permit.

(2) A vehicle eligible for a permit shall meet the specifications and limitations established in KRS 189.222 and Section four (4) of this administrative regulation.

(3) An applicant for a permit shall submit the following to the Division of Motor Carriers:

(a) A completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10;

(b) A payment of sixty (60) dollars pursuant to KRS 189.270(2); and

(c) A copy of an international bill of lading signed by a custom's official, or an international bill of lading with an equipment interchange and inspection report.

(4) A permit shall be valid for:

- (a) One (1) move;

- (b) A duration of ten (10) days; and
 (c) Twenty four (24) hour continuous movement during the duration of the permit.
 (5) An operator shall at all times during the move have in his or her possession a copy of the documents established in subsection (3) (c) of this section.

Section 20[Section 24]. Denial of Permit Application. (1) In accordance with 23 C.F.R. 658.17, the Division of Motor Carriers shall deny a permit application if:

- (a) The route includes any portion of the interstate highway system; and
 (b) The load is divisible.
 (2) The Transportation Cabinet shall deny or restrict a permit for the use of any route if it is detrimental to public safety or convenience. The Transportation Cabinet shall consider the following while making a determination on the application:
 (a) The strength of all bridges and structures on the route;
 (b) Traffic congestion on the route;
 (c) Horizontal and vertical clearance on[alignment of] the route;
 (d) The availability of alternate routes that afford greater safety;
 (e) Urban development in residential and commercial areas on the route;
 (f) The proximity of schools to the route; and
 (g) Any other condition that would unduly compromise public safety and convenience.

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

- (a) "Application for Annual Overweight or Overdimensional Permit", TC Form 95-25, August 2010;
 (b) "Housing Moving Application", TC Form 95-310, November 2007;[;]
 (c) "Kentucky Overweight or Overdimensional Permit Worksheet", TC Form 95-10 August, 2010.
 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4 p.m.

THOMAS O. ZAWACKI, Commissioner
 MIKE HANCOCK, Secretary

APPROVED BY AGENCY: January 12, 2012

FILED WITH LRC: January 12, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2012 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business February 29, 2012. 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: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the parameters and procedures for obtaining overweight and overdimensional annual and single trip permits.

(b) The necessity of this administrative regulation: This administrative regulation is needed to amend the existing regulation to remove references to overweight and overdimensional farm equipment and update the language of the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 189.270(6) requires the cabinet to promulgate administrative regulations relating to overweight and overdimensional annual and single trip permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These amendments update the existing regulation that the cabinet is required to promulgate pursuant to KRS 189.270(6).

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

(a) How the amendment will change this existing administrative regulation: This amendment will remove sections of the administrative regulation relating to overweight and overdimensional farm equipment; clarify the language addressing escort and towing vehicles; and add a section establishing the permitting process for vehicles moving containerized ocean-going cargo units.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to update this regulation in response to the recent filing of 601 KAR 1:019 which deals specifically with overweight and overdimensional farm equipment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates cabinet procedures and industry standards for the movement of motor vehicles with divisible or nondivisible loads exceeding legal weights or dimensions.

(d) How the amendment will assist in the effective administration of the statutes: Persons applying for an overweight or overdimensional trip permit will have the most current information as to procedures, forms, and escort vehicle requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts entities and individuals currently operating with an annual or a single trip permit as well as future applicants for permits. It also impacts the cabinet's Division of Motor Carriers that issues the permits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any additional actions as a result of these amendments.

(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. The issuance cost of an annual and trip permit is already established by KRS 189.270.

(c) As a result of compliance, what benefits will accrue to the entities identified in questions (3): Entities and individuals that qualify will be able to obtain special overweight or overdimensional permits.

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

(a) Initially: No costs are associated with these amendments.

(b) On a continuing basis: There are on-going costs related to administration of the permitting process within the cabinet and enforcement of the regulation. These amendments should not increase the current cost of the process.

(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 regula-

tion, if new, or by the change if it is an amendment: No increase in any fees will be necessary.

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

(9) TIERING: Is tiering applied? Yes. Tiering is applied because restrictions on travel vary depending on safety issues and length of trip (single trip v. annual).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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 Carriers.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189.270(6), 189.271(9)(b), 189.2715(1), 189.2717(1)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional costs are required or expected.

(a) How much 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 regulation will not generate additional revenue.

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

(c) How much will it cost to administer this program for the first year? No costs are required or expected.

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

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 Department for Libraries and Archives Public Records Division (Amendment)

725 KAR 1:061. Records retention schedules; authorized schedules.

RELATES TO: KRS 171.420(3), 171.450

STATUTORY AUTHORITY: KRS 171.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.420(3) provides that the State Archives and Records Commission shall be the final authority for the disposition of all public records in Kentucky. KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to promulgate administrative regulations to enforce the provision of KRS 171.410 to 171.740. This administrative regulation identifies records retention and disposition schedules approved by the commission that state and local agencies shall follow for retention and disposition of public records.

Section 1. Schedules. (1) A Kentucky state government agency shall comply with:

(a) Records Retention Schedule, General Schedule for State Agencies;

(b) Records Retention Schedule, General Schedule for Electronic and Related Records; and

(c) The applicable schedule for the specific agency from among the following:

1. Records Retention Schedule, Department of Agriculture;

2. Records Retention Schedule, Auditor of Public Accounts;

3. Records Retention Schedule, Economic Development Cabinet;

4. Records Retention Schedule, Education and Workforce Development Cabinet;

5. Records Retention Schedule, Energy and the Environment Cabinet;

6. Records Retention Schedule, Finance and Administration Cabinet;

7. Records Retention Schedule, General Government;

8. Records Retention Schedule, Office of the Governor;

9. Records Retention Schedule, Cabinet for Health and Family Services;

10. Records Retention Schedule, Justice and Public Safety Cabinet;

11. Records Retention Schedule, Department of Law;

12. Records Retention Schedule, Labor Cabinet;

13. Records Retention Schedule, Legislative Branch;

14. Records Retention Schedule, Office of the Lieutenant Governor;

15. Records Retention Schedule, Personnel Cabinet;

16. Records Retention Schedule, Public Protection Cabinet;

17. Records Retention Schedule, Office of the Secretary of State;

18. Records Retention Schedule, Tourism, Arts and Heritage Cabinet;

19. Records Retention Schedule, Transportation Cabinet; or

20. Records Retention Schedule, Department of the Treasury.

(2) State universities and the Kentucky Community and Technical College System shall comply with the Records Retention Schedule, State University Model.

(3) Kentucky local government agencies shall comply with:

(a) Records Retention Schedule, Local Government General Records Schedule;

(b) Records Retention Schedule, General Schedule for Electronic and Related Records; and

(c) The applicable schedule for the specific agency from among the following:

1. Records Retention Schedule, Area Development District;

2. Records Retention Schedule, County Attorney;

3. Records Retention Schedule, County Clerk;

4. Records Retention Schedule, County Coroner;

5. Records Retention Schedule, County Judge Executive;

6. Records Retention Schedule, County Sheriff;

7. Records Retention Schedule, County Treasurer;

8. Records Retention Schedule, Jailer;

9. Records Retention Schedule, Lexington Fayette Urban County Government;

10. Records Retention Schedule, Public Library and Library Board;

11. Records Retention Schedule, Local Health Department;

12. Records Retention Schedule, Louisville Metro Government;

13. Records Retention Schedule, Municipal Government; or

14. Records Retention Schedule, Public School District (K-12/Central Office).

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference: (a) "Records Retention Schedule, General Schedule for State Agencies", 2011;

(b) "Records Retention Schedule, General Schedule for Electronic and Related Records", 2011;

(c) "Records Retention Schedule, Department of Agriculture", 2011;

(d) "Records Retention Schedule, Auditor of Public Accounts", 2011;

(e) "Records Retention Schedule, Economic Development Cabinet", 2011;

(f) "Records Retention Schedule, Education and Workforce Development Cabinet", 2011;

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(g) "Records Retention Schedule, Energy and Environment Cabinet", September 2011;
 (h) "Records Retention Schedule, Finance and Administration Cabinet", 2011;
 (i) "Records Retention Schedule, General Government", September 2011;
 (j) "Records Retention Schedule, Office of the Governor", 2011;
 (k) "Records Retention Schedule, Cabinet for Health and Family Services", September 2011;
 (l) "Records Retention Schedule, Justice and Public Safety Cabinet", 2011;
 (m) "Records Retention Schedule, Labor Cabinet", 2011;
 (n) "Records Retention Schedule, Department of Law", 2011;
 (o) "Records Retention Schedule, Legislative Branch", 2011;
 (p) "Records Retention Schedule, Office of the Lieutenant Governor", 2011;
 (q) "Records Retention Schedule, Personnel Cabinet", 2011;
 (r) "Records Retention Schedule, Public Protection Cabinet", 2011;
 (s) "Records Retention Schedule, Office of the Secretary of State", 2011;
 (t) "Records Retention Schedule, Transportation Cabinet", 2011;
 (u) "Records Retention Schedule, Tourism, Arts and Heritage Cabinet", 2011;
 (v) "Records Retention Schedule, Department of the Treasury", 2011;
 (w) "Records Retention Schedule, State University Model", September 2011;
 (x) "Records Retention Schedule, Local Government General Records", 2011;
 (y) "Records Retention Schedule, Area Development District", 2011;
 (z) "Records Retention Schedule, County Attorney", 2011;
 (aa) "Records Retention Schedule, County Clerk", 2011;
 (bb) "Records Retention Schedule, County Coroner", 2011;
 (cc) "Records Retention Schedule, County Jailer", 2011;
 (dd) "Records Retention Schedule, County Judge Executive", 2011;
 (ee) "Records Retention Schedule, County Sheriff", 2011;
 (ff) "Records Retention Schedule, County Treasurer", 2011;
 (gg) "Records Retention Schedule, Lexington Fayette Urban County Government", 2011;
 (hh) "Records Retention Schedule, Public Library and Library Board", 2011;
 (ii) "Records Retention Schedule, Local Health Department", 2011;
 (jj) "Records Retention Schedule, Louisville Metro Government", 2011;
 (kk) "Records Retention Schedule, Municipal Government", 2011; and
 (ll) "Records Retention Schedule, Public School District (K-12/Central Office)", 2011. (a) "Records Retention Schedule, General Schedule for State Agencies", 2010;
 (b) "Records Retention Schedule, General Schedule for Electronic and Related Records", 2010;
 (c) "Records Retention Schedule, Department of Agriculture", 2010;
 (d) "Records Retention Schedule, Auditor of Public Accounts", 2010;
 (e) "Records Retention Schedule, Economic Development Cabinet", 2010;
 (f) "Records Retention Schedule, Education and Workforce Development Cabinet", 2010;
 (g) "Records Retention Schedule, Energy and Environment Cabinet", September 2010;
 (h) "Records Retention Schedule, Finance and Administration Cabinet", 2010;
 (i) "Records Retention Schedule, General Government", September 2010;
 (j) "Records Retention Schedule, Office of the Governor", 2010;
 (k) "Records Retention Schedule, Cabinet for Health and Family

Services", September 2010;
 (l) "Records Retention Schedule, Justice and Public Safety Cabinet", 2010;
 (m) "Records Retention Schedule, Labor Cabinet", 2010;
 (n) "Records Retention Schedule, Department of Law", 2010;
 (o) "Records Retention Schedule, Legislative Branch", 2010;
 (p) "Records Retention Schedule, Office of the Lieutenant Governor", 2010;
 (q) "Records Retention Schedule, Personnel Cabinet", 2010;
 (r) "Records Retention Schedule, Public Protection Cabinet", 2010;
 (s) "Records Retention Schedule, Office of the Secretary of State", 2010;
 (t) "Records Retention Schedule, Transportation Cabinet", 2010;
 (u) "Records Retention Schedule, Tourism, Arts and Heritage Cabinet", 2010;
 (v) "Records Retention Schedule, Department of the Treasury", 2010;
 (w) "Records Retention Schedule, State University Model", September 2010;
 (x) "Records Retention Schedule, Local Government General Records", 2010;
 (y) "Records Retention Schedule, Area Development District", 2010;
 (z) "Records Retention Schedule, County Attorney", 2010;
 (aa) "Records Retention Schedule, County Clerk", 2010;
 (bb) "Records Retention Schedule, County Coroner", 2010;
 (cc) "Records Retention Schedule, County Jailer", 2010;
 (dd) "Records Retention Schedule, County Judge Executive", 2010;
 (ee) "Records Retention Schedule, County Sheriff", 2010;
 (ff) "Records Retention Schedule, County Treasurer", 2010;
 (gg) "Records Retention Schedule, Lexington Fayette Urban County Government", 2010;
 (hh) "Records Retention Schedule, Public Library and Library Board", 2010;
 (ii) "Records Retention Schedule, Local Health Department", 2010;
 (jj) "Records Retention Schedule, Louisville Metro Government", 2010;
 (kk) "Records Retention Schedule, Municipal Government", 2010; and
 (ll) "Records Retention Schedule, Public School District (K-12/Central Office)", 2010.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Public Records Division, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WAYNE ONKST, Commissioner

APPROVED BY AGENCY: January 11, 2012

FILED WITH LRC: January 12, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2012 at 10:00 a.m. at the offices of the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Board Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 14, 2012, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 29, 2012. 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: Wayne Onkst, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky

40601, phone (502)564-8300 ext. 312, fax (502)564-5773.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Wayne Onkst

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies records retention schedules approved for use by public agencies.

(b) The necessity of this administrative regulation: KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to enforce the provision of KRS 171.410 to 171.740 by promulgating administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.450(1)(a) and (b) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal and for the disposal or destruction of public records authorized for disposal or destruction. This regulation identifies those schedules.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates the permanent retention, disposal or destruction of public records by identifying schedules public agency personnel shall use in meeting their responsibilities related to public records management. The retention and dispositions mandated by the State Archives and Records Commission are documented on approved records retention schedules.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates schedule dates, agency names, and retention decisions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the regulation is current and up-to-date.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires that schedules be created for public agency records.

(d) How the amendment will assist in the effective administration of the statutes: The amendment of this regulation will ensure that agencies have the most complete information in carrying out their records management programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local government agencies must follow this regulation, as all have a responsibility to dispose of records according to decisions of the State Archives and Records Commission, outlined in the records retention schedules.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 responsibilities added to those already existing for public agencies under 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 will be no new costs added to those already existing for public agencies under this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies who comply with this regulation will recognize more effective and efficient business practices, will recognize cost savings from reduced records storage costs, and will document agency history more effectively.

(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 for agencies to implement this regulation. This regulation merely identifies schedules utilized in activities agencies are undertaking already.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in this regulation are already undertaken by public agencies.

(7) Provide an assessment of whether an 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 required increase is projected.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies uniformly to all public agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government entities are required to use the appropriate documents enumerated in this regulation in order to be compliant with the public records law.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 net effect on agencies' expenditures and revenues. Continued good records management results in cost savings for government, and in more efficient operation of government.

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs generated because of this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs generated because of this regulation.

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation:

**PUBLIC PROTECTION CABINET
Department of Insurance
Consumer Protection Division
(Amendment)**

806 KAR 2:095. Accounting and reporting requirements for collecting local government premium tax.

RELATES TO: KRS 91A.080, 304.4-010

STATUTORY AUTHORITY: KRS Chapter 13A, 91A.080, 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-

110 provides that the Commissioner[Executive Director] of Insurance may make reasonable rules and administrative regulations necessary for and as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. KRS 91A.080 authorizes the Commissioner[Executive Director] of Insurance to adopt administrative regulations for the collection and reporting of local government premium taxes. This administrative regulation provides for the accounting and reporting procedures to be used by every insurance company or its agent, to which this administrative regulation applies, for the collection and reporting of the fees or taxes and the collection fee herein provided by ordinance of a city, county, or urban county government for engaging in the business of insurance therein.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Commissioner" is defined in KRS 304.1-050(1) "Executive Director" means the Commissioner of the Kentucky Office of Insurance].

(3) "Insurance company" means:

(a) An entity holding a certificate of authority in accordance with KRS 304, Subtitle 3; and

(b) A surplus lines broker licensed in accordance with KRS 304.10-120.

(4) "Local government" is defined in KRS 91A.0802(1).

(5)[(2)] "Local government premium tax[Local government premium taxes]" means a tax or license fee[taxes] levied pursuant to KRS 91A.080. [(3) "Premiums actually collected within a calendar quarter" means premiums which have been received within a at an insurer's home, administrative, or regional offices within a calendar quarter. Agency contracts which allow agents a period of time in which to forward premium payments to insurers shall not allow an unreasonably long period of time. An agency contract which allows an agent more than ninety (90) days to forward premium payments to an insurer is presumed to allow an unreasonably long period of time. This presumption may be rebutted by appropriate evidence.]

Section 2. Quarterly Payment and Reporting of Local Government Premium Taxes. (1)Each insurance company[insurer] with local government premium tax liability shall make payment of its tax liability based on premiums actually collected within a calendar quarter. Payment shall be made to each local government within thirty (30) days of the end of each calendar quarter, and shall be accompanied by a report in the following format:[Insurers shall make their returns on forms]

(a) 1. Form LGT-141, "City, County or Urban County Government Quarterly Insurance Premium Tax Return"; and

2. Form LGT 142, "City Credit Against County Taxes"; or [prescribed by the executive director(or forms)]

(b) A form substantially similar to Form LGT-141:[those prescribed by the executive director] or on forms prescribed by cities, counties, or urban county governments.

(2) A copy of the report required in subsection (1) of this section [Copies of these forms] shall not be filed with the commissioner[executive director unless the executive director directs that returns be filed with the executive director].

Section 3. Annual Reports. (1) By March 31 of each year, an insurance company[insurers] shall:

(a) Furnish[furnish] each local government[city, county, and urban county government] to which local government premium taxes have been paid during the preceding calendar year a report on the local government premium taxes paid during the preceding calendar year in the following format: [A copy of this report shall be filed with the executive director accompanied by a fee of five (5) dollars per insurer.]

1. a. Form LGT-140, "City, County or Urban County Government Insurance Premium Tax Annual Reconciliation"; and

b. Form LGT 142, "City Credit Against County Taxes"; or [prescribed by the executive director(or forms)]

2. A form substantially similar to Form LGT-140; and [those prescribed by the executive director] or on forms prescribed by cities, counties, or urban county governments.]

(b) Submit to the department a report on the local government

premium taxes paid during the preceding calendar year, accompanied by a fee of five (5) dollars per insurance company, through:

1. The Department of Insurance website, <https://insurance.ky.gov/kentucky/secured/Eservices/default.aspx>; or

2. File Transfer Protocol through prior arrangement with the Department of Insurance.

(2) (a) If an insurance company does not have any local government premium tax liability for the preceding calendar year, the insurance company shall submit a report to the department in accordance with subsection (1)(b) of this section.

(b) The reports required by subsection (2)(a) of this section shall be required if the insurance company held an active license or certificate of authority at any time during the preceding calendar year.[The reports required by this section shall be filed with cities, counties, and urban county governments and with the executive director by March 31st of each year following the calendar year to which the reports apply.

(3) The reports required by this section shall be on a form prescribed by the executive director (or on a form substantially similar to that prescribed by the executive director).

(4) The form prescribed by the executive director shall contain the following information:

(a) An itemization of all premiums collected for which a local government premium tax is payable together with the amount of such tax collected and paid to each city, county, or urban county government for the following kinds of insurance:

1. Casualty;
2. Fire and allied perils;
3. Health;
4. Inland marine;
5. Life;
6. Motor vehicle; and
7. Such other kinds of insurance as the executive director may designate.

(b) Such other information as the executive director may designate.]

Section 4. Each insurance company[insurer] shall maintain records adequate to support the reports required by this administrative regulation. ~~[This section applies to insurance agents and surplus lines brokers to the extent they are responsible for collecting and paying local government premium taxes imposed pursuant to KRS 91A.080.]~~

Section 5. Each insurance company shall[insurer must] file the reports required by this administrative regulation. Reports required by this administrative regulation and [Data] filed on a group basis shall not be acceptable[is unacceptable].

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form LGT-140, "City, County, or Urban County Government Insurance Premium Tax Annual Reconciliation" (1/2012);

(b) Form LGT-141, "City, County, or Urban County Government Quarterly Insurance Premium Tax Return" (1/2012); and

(c) Form LGT-142 "City Credit Against County Taxes" (1/2012).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department 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's website at: <http://insurance.ky.gov/>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: January 9, 2012

FILED WITH LRC: January 10, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2012, at 9:00 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 16, 2012, five workdays prior to the

hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 29, 2012. 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: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the accounting and reporting procedures to be used by every insurance company or its agent, to which this administrative regulation applies, for the collection and reporting of the fees or taxes and the collection fee herein provided by ordinance of a city, county, or urban county government for engaging in the business of insurance therein.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 91A.080(6).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 91A.080 authorizes the commissioner to adopt administrative regulations for the collection and reporting of local government premium taxes. This administrative regulation sets forth the process to report local government premium taxes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will set forth the process and format for insurance companies to use for reporting local government premium taxes to both local governments and the Department of Insurance.

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

(a) How the amendment will change this existing administrative regulation: The amendments will clarify the existing process of requiring insurance companies to file an annual reconciliation even if there is no tax due. Further, the amendments will incorporate by reference the current paper and electronic forms used for both quarterly and annual reporting. Finally, the amendments will bring the administrative regulation into compliance with the drafting requirements in KRS 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to clarify an existing process and to incorporate the forms utilized for reporting local government premium taxes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 91A.080 authorizes the commissioner to adopt administrative regulations for the collection and reporting of local government premium taxes. The amendments to this administrative regulation set forth the process to report local government premium taxes.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation set forth the process and format for insurance companies to use for reporting local government premium taxes to both local governments and the Department of Insurance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 1,409 insurance companies that hold a certificate of authority in Kentucky and approximately 340 actively licensed surplus lines brokers that are subject to local government taxes.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, includ-

ing:

(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 be required to adhere to the standards in this regulation in order to properly report local government premium taxes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The process set forth in this administrative regulation clarifies a long-standing practice regarding the reporting process. As insurers have already been complying in this manner, there is no cost to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, regulated entities will be properly reporting local government premium taxes in accordance with KRS 91A.080.

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

(a) Initially: There will not be a cost to implement this administrative regulation.

(b) On a continuing basis: There will not be a continuing cost related to this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs are incurred, the budget of the Kentucky Department of Insurance will be used for 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 increase in fees or funding 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 directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies holding a certificate of authority in Kentucky and all licensed surplus lines brokers subject to local government taxes.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 91A.080(6).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not have an impact on the expenditures and revenues of the Department of Insurance.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost to the Department of Insurance associated with this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? There will not be a cost associated with this administrative regulation in subsequent years.

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: As the amendments to this administrative regulation clarify an existing process, this administrative regulation will not have a fiscal impact on the Department of Insurance.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Home Inspectors
(Amendment)**

815 KAR 6:010. Home inspector licensing requirements and maintenance of records.

RELATES TO: KRS 198B.700, KRS 198B.706, KRS 198B.712, KRS 198B.714, KRS 198B.716, KRS 198B.722, KRS 198B.724[; EO-2009-535]

STATUTORY AUTHORITY: KRS 198B.706, KRS 198B.722(7)[; EO-2009-535]

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(1) and (15) require the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738 and to establish requirements for licensing and certification as well as prescribing forms and applications. KRS 198B.706(7) requires the board to inspect the records of a licensee. KRS 198B.706(11) requires the board to establish continuing education requirements. KRS 198B.722 requires the board to set the requirements for renewal of licenses and authorizes the board to establish an inactive license.[EO-2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department.] This administrative regulation establishes the licensure and record requirements for home inspectors.

Section 1. Definitions. (1) "Applicant" is defined by KRS 198B.700(1).

(2) "Board" is defined by KRS 198B.700(2).

(3) "Contact hour" means fifty (50) minutes of instruction, exclusive of any breaks, recesses, or other time not spent in instruction.

(4) [(3)] "Licensee" is defined by KRS 198B.700(8).

Section 2. Application Requirements. (1) An applicant for a home inspector license shall submit the following:

(a) A completed Application for Initial Licensure as a Kentucky Home Inspector, Form KBHI 1;

(b) A 2 in. x 2 in. passport photograph affixed to the application form;

(c) A certificate of course completion and the applicant's national examination test score;

(d) A certificate of insurance;

(e) If applicable, other state or local licensure, certification, registration, or permit;

(f) A report with the results of the state-wide background check; and

(g) A nonrefundable fee of \$250.

(2) An applicant for a home inspector license shall:

(a) Complete and pass a board-approved, precursing training course administered by a provider who has been approved by the board in accordance with 815 KAR 6:040 and subsection (8) of this section; and

(b) Pass an examination conducted by a board-approved test provider.

(3) A request to sit for the examination shall be made directly to the test provider.

(4) The examination fee shall be set by the testing company and shall be paid directly to the test provider.

(5) A passing score on the examination shall be valid for a period of three (3) years.

(6) Failing the examination.

(a) An applicant who fails to pass the examination two (2)

times shall wait at least fourteen (14) calendar days from the date of the second failed examination prior to retaking the examination.

(b) An applicant who fails to pass the examination three (3) or more times shall wait at least thirty (30) calendar days from the date of the third or subsequent failed examination failed examination prior to retaking the examination.

(c) An applicant who fails to pass the examination five (5) times shall not be eligible to retake the examination and shall not be eligible to apply for a license.

(7) Procedures and conduct.

(a) The applicant shall follow:

1. Procedures and appropriate conduct established by the board or testing service administering an examination if the procedures and conduct requirements are provided or made available to each applicant or orally announced before the start of the examination; and

2. Written instructions communicated prior to the examination date and any instructions communicated at the testing site, either written or oral, on the date of the examination.

(b) Failure to comply with all procedures established by the board or the testing service with regard to conduct at the examination shall be grounds for denial of the application.

(8) Course requirements. To be approved by the board, a precursing training course shall require a minimum of:

(a) Sixty-four (64) credit hours of training in the following subject areas for at least the number of hours specified:

1. Manufactured housing: three (3) hours;

2. Standards of practice, licensing law and administrative regulations, contracts, report writing, and communications: eleven (11) hours;

3. Exterior, roofing, insulation, and ventilation: six (6) hours;

4. Structure and interior: nine (9) hours;

5. Electrical and plumbing: nine (9) hours;

6. Heating and air conditioning: six (6) hours;

7. Field training: sixteen (16) hours, including not more than eight (8) hours in a laboratory;

8. General residential construction: three (3) hours; and

9. Environmental hazards, mitigation, water quality, and indoor air quality: one (1) hour;

(b) The completion of three (3) unpaid home inspections with satisfactory written reports submitted to the course provider in addition to the sixteen (16) hours of field training required by paragraph (a)7 of this subsection; and

(c) An exit examination with a passing score.

(9) Criminal background checks and other disciplinary proceedings.

(a) Each applicant shall undergo a state-wide criminal background check administered by a law enforcement agency capable of conducting a state-wide background check and submit the results of the check along with the applicant's application.

(b) If an applicant has resided in a state for less than five (5) years prior to application, the applicant shall also obtain and submit a state-wide criminal background check by a law enforcement agency capable of conducting a state-wide background check from the state where the applicant previously resided.

(c) The board may deny or refuse to renew a license to an applicant or licensee who:

1. Has pleaded guilty to or has been convicted of a:

a. Felony;

b. Misdemeanor[~~involving theft or dishonesty; or~~

c. Sex offense]; or

2. Has had disciplinary action taken against a professional license, certificate, registration, or permit held by the applicant or licensee in any jurisdiction or state, including Kentucky.

Section 3. Reciprocity. An applicant seeking a license through reciprocity in accordance with KRS 198B.714 shall:

(1) Submit a completed Application for Initial Licensure as a Kentucky Home Inspector, Form KBHI 1, and attachments established in Section 2(1)(b) through (f) of this administrative regulation;

(2) Pay a nonrefundable fee of \$250; and

(3) Meet the conditions of KRS 198B.714(1).

Section 4. Nonresident Licensees. A nonresident licensee shall:

(1) Submit a completed Application for Initial Licensure as a Kentucky Home Inspector, Form KBHI 1, and attachments established in Section 2(1)(b) through (f) of this administrative regulation;

(2) Pay the fee established in Section 2(1)(b) of this administrative regulation; and

(3) Comply with the provisions set forth in KRS 198B.716 and this administrative regulation.

Section 5. Renewal of Licenses. In addition to the requirements set forth in KRS 198B.722, to renew a license, the licensee shall:

(1) Satisfy the continuing education requirements of Section 7 of this administrative regulation;

(2) Pay a nonrefundable renewal fee of \$200[\$250] per year for each license that expires on or after July 1, 2012, to and including June 30, 2014, or;

(3) Pay a nonrefundable renewal fee of \$250 per year for each license that expires on or after July 1, 2014;

(4)[(3)] Submit a fully-completed Application for Renewal of Kentucky Home Inspector License, Form KBHI 2 and attachments, including:

(a) A certificate of completion for continuing education;

(b) A certification of insurance information;

(c) If applicable, other state or local licensure, certification, registration, or permit; and

(d) A state-wide criminal background check; and

(5)[(4)] Submit a copy of a completed inspection report that has been compiled within the previous twelve (12) months immediately preceding renewal.

Section 6. Continuing Education. (1) The continuing education requirements of this section shall apply only to those licensees who will have been licensed at least twelve (12) months at license renewal.

(2) Each licensee shall be required to have at least fourteen (14) hours of continuing education per license year.

(3) Prior to any renewal, the continuing education shall include a minimum of the following:

(a) Three (3) hours in manufactured housing;

(b) Three (3) hours in Kentucky laws and administrative regulations; and

(c) Eight (8) hours in technical courses, including identification, determination, and report writing as applicable within the standards of practice

(4) Continuing education shall be obtained from those providers approved by the board as provided in 815 KAR 6:040.

(5) An approved prelicensing course shall satisfy the initial fourteen (14) hour continuing education requirement.

(6) A maximum of three (3) hours per license year shall be awarded for teaching part of a home inspection credit course or home inspection continuing education course as applied to the appropriate content area set forth in Section 3(a)-(c) of this administrative regulation.

(7) A maximum of three (3) hours per license year shall be awarded for appointment to the Board as applied to the content area set forth in Section 3(b) of this administrative regulation.

Section 7. Inactive License. (1) Placement of a license in inactive status.

(a)1. To place a license in inactive status, a licensee shall submit a notarized statement indicating the desire to have the license placed in inactive status.

2. This notarized statement shall be mailed to the board and shall be accompanied by the following:

a. A check for ten (10) dollars made payable to the Kentucky State Treasurer;

b. The actual license card of the licensee; and

c. A current mailing address for the licensee.

(b) Licensees in inactive status shall not engage in any home inspection activities within the Commonwealth of Kentucky.

(2) Renewal of license in inactive status.

(a) A licensee with an inactive license shall pay an annual inactive status fee equal to fifty (50) percent of the current renewal fee for an active license.

(b) Failure to pay this annual fee shall result in the expiration of the license on the last day of the licensee's birth month.

(3) Insurance coverage for licensees with inactive license. A licensee with an inactive status license shall not be required to maintain the insurance coverage required by KRS 198B.712(3)(d) during inactive status.

Section 8. Reactivation of Inactive License to Active Status. (1) A licensee who wishes to reactivate a license shall contact the board and submit a notarized statement requesting approval to return to active status.

(2) This request shall be accompanied by the following:

(a) The name of the licensee requesting activation;

(b) The license number of the licensee requesting reactivation;

(c) The birth date of the licensee requesting reactivation;

(d) A current mailing address for the licensee requesting reactivation;

(e) A check in the amount of ten (10) dollars made payable to the Kentucky State Treasurer;

(f) Proof of liability insurance naming the individual in the amount of \$250,000 as required by KRS 198B.712(3)(d);

(g) A state-wide criminal background check administered by a law enforcement agency capable of conducting a state-wide background check; and

(h) Proof of continuing education as required by Section 9 of this administrative regulation; and

(3) A license that has been inactive for a period of five (5) years from the date of board action shall be considered expired.

Section 9. Continuing Education Requirements for Licensees in Inactive Status Returning to Active Status. A licensee with an inactive status who wishes to reactivate the license shall complete the following continuing education requirements prior to application to return to active status:

(1) Fourteen (14) hours per year that the license has been inactive. This fourteen (14) hours shall include:

(a) Three (3) hours in manufactured housing;

(b) Three (3) hours of Kentucky law and administrative regulations; and

(c) Eight (8) hours, in any combination, of:

1. Electrical;

2. Plumbing;

3. Heating, ventilation and air conditioning;

4. Roofing; or

5. Report writing.

(2) A board approved sixty-four (64) hour prelicensing training course may be used to satisfy this requirement.

Section 10. Maintenance of Records. (1) Address.

(a) A license holder shall report a change of address to the board in writing within ten (10) days after the change.

(b) The board shall not be responsible for the license holder's failure to receive notices, communications, and correspondence caused by the license holder's failure to promptly notify the board of a change of address.

(2) Names.

(a) A license holder shall notify the board in writing of a name change within thirty (30) days of the change.

(b) The notification shall be accompanied by a copy of a marriage certificate, divorce decree, court order, or other documentation that verifies the name change.

(c) The board shall not be responsible for the license holder's failure to receive notices, communications, and correspondence caused by the license holder's failure to promptly notify the board of a name change.

(3) Inspection records.

(a) A licensed home inspector shall retain the following records for a period of three (3) years from the date of the inspection:

1. The written reports;

2. The contract; and

3. Supporting documentation, if applicable.

(b) Records may be retained in retrievable, electronic format.

(c) The licensee shall provide all records requested by the board within ten (10) days of receipt of the request. ~~[(d) The licensee shall not destroy any records, if notified by the board that it is requesting the records.]~~

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as a Kentucky Home Inspector", Form KBHI 1, 1-2012; and

(b) "Application for Renewal of Kentucky Home Inspector License", Form KBHI 2, 1-2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601 ~~[Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405,]~~ Monday through Friday, 8 a.m. to 5[4:30] p.m.

MARK SCHMIDT, Chair

APPROVED BY AGENCY: January 10, 2012

FILED WITH LRC: January 13, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2012, at 1:30 p.m., local time, at the Kentucky Board of Home Inspectors, 911 Leawood Drive, Frankfort, Kentucky. 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 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 close of business on February 29, 2012. 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: Tony Crockett, Board Administrator, Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tony Crockett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation sets forth the requirements for an initial applicant for licensure as a home inspector, the reciprocity requirements for licensure by reciprocity, the nonresident requirements for nonresident licensure, the requirements for an applicant to renew licensure, the required continuing education standards, inactive licenses, reactivation of inactive licenses, continuing education requirements for reactivation of inactive licenses, and maintenance of records.

(b) The necessity of this administrative regulation: This administrative is necessary to set the various requirements for licensure as a home inspector.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.706, KRS 198B.722(7) allow the Board to set various requirements for licensure. The Board is amending this administrative regulation establishing the various requirements for licensure as a home inspector.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation establishing the various requirements for licensure as a home inspector.

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

(a) How the amendment will change this existing administrative regulation: This amended administrative regulation will change the criminal convictions that may be grounds for denial of licensure,

sets the amount of hours for continuing education obtained from teaching approved courses, limits the number of times an applicant has to pass the required examination, and reduces the renewal fees for the Fiscal Year July 1, 2012, to June 30, 2014.

(b) The necessity of the amendment to this administrative regulation: This amended administrative regulation is necessary to update these applicable standards and to reduce renewal fees for the Fiscal Year July 1, 2012, to June 30, 2014.

(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the content of the authorizing statutes by establishing the requirements for licensure, continuing education, and reducing renewal fees for the Fiscal Year July 1, 2012, to June 30, 2014.

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation will assist in the effective administration of the statutes by updating the established requirements for licensure, continuing education, and reducing renewal fees for the Fiscal Year July 1, 2012, to June 30, 2014.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 350 licensed home inspectors and potential applicants for a license as a home inspector.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 amended administrative regulation updates the established requirements for licensure, continuing education, and reduces the renewal fees for the Fiscal Year July 1, 2012, to June 30, 2014.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to the entities identified will remain the same for initial applicants and will be reduced for renewals of existing licensees of the Board. A very few licensees of the Board may have slight increased costs by limiting the number of hours available to satisfy the continuing education requirements for hours received by teaching applicable courses

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits include updating the established standards and reducing the renewal fees for the Fiscal Year July 1, 2012, to June 30, 2014.

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

(a) Initially: \$1,000 or more based on the administrative costs to the Board to issue and to renew licenses.

(b) On a continuing basis: \$1,000 or more based on the administrative costs to the Board to issue and to renew licenses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board's operation is funded by fees paid by the licensees 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: This amended administrative regulation reduces the renewal fees for the Fiscal Year July 1, 2012, to June 30, 2014.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amended administrative regulation reduces the renewal fees for the Fiscal Year July 1, 2012, to June 30, 2014.

(9) TIERING: Is tiering applied? No, this amended administrative regulation applies to all applicants for a license and to all applicants for renewal of licensure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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 Home Inspectors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.706, KRS 198B.722(7)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately \$70,000 from both applicants for an initial license and license renewals.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately \$70,000 from both applicants for an initial license and license renewals.

(c) How much will it cost to administer this program for the first year? \$65,000.00

(d) How much will it cost to administer this program for subsequent years? \$70,000

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

RELATES TO: KRS 209.020(4), 216.557(1), 216.750(2), 216B.010-216B.131, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

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

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

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

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

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

(4) "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.

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

(6) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 1:011[924 KAR 2:006].

(7) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Behavioral Health, Developmental and Intellectual Disabilities[Department for Mental Health, Developmental Disabilities, and Addiction Services] to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

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

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

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

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

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

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

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

(4) A mandatory payment shall discontinue if:

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

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

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

(a) Income as recognized in December 1973 decreases;

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

(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.

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

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 1:011, Sections 1(7), (8), 5(5), (6), (7), (13), 10, and 11;

(b) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(c) 907 KAR 1:645;

(d) 907 KAR 1:650, Section 1(9); and

(e) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

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

(a) Furnish a Social Security number; or

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

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

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

Section 4. Optional State Supplementation Payment. (1) An

optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

- (a) Requires a full-time living arrangement;
- (b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and
- (c) 1. Resides in a personal care home and is sixteen (16) years of age or older in accordance with 902 KAR 20:036, Section 3(3)(a);

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

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

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

(a) Residence in a personal care home that:

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

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

(b) Residence in a family care home that:

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

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

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

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

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

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation; or

b. Residence; or

2. Death of the state supplementation recipient; and

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

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

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

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

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence; or

2. Death of the state supplementation recipient; and

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

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

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

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

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

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

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

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

(a) A live-in attendant; or

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

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

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

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

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

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

1. The spouse;

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

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

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(9); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

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

(a) \$2000 for individual; or

(b) \$3000 for couple.

Section 7. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(9); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

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

(a) Adding:

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

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

(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

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

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

1. Himself; and

2. Each minor dependent child.

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

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

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

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

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

(9)(a) For a resident in the Elder Shelter Network Program, income and resources of the spouse shall be disregarded for the month of separation.

(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

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Section 8. Standard of Need. (1) To the extent funds are available, the standard of need is as follows:

(a) For a resident of a personal care home on or after January 1, 2012, \$1,218[2009, \$1,194];

(b) For a resident of a family care home on or after January 1, 2012, \$870[2009, \$846]; or

(c) For individuals who receive caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability on or after January 1, 2012, \$760[2009, \$736];

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care on or after January 1, 2012, \$1,109[2009, \$1,072]; or

3. An eligible couple, both aged, blind or have a disability and both requiring care on or after January 1, 2012, \$1,163[2009, \$1,126].

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

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

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

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

Section 9. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

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

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

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

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

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

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

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

1. Notification of the temporary admission; and

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

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

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

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

Section 10. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified alien.

Section 11. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 12. ~~[Persons with]~~ Mental Illness or Mental Retardation

~~(MI/MR) Supplement Program.~~ (1) A personal care home:

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

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

(c) Shall meet the following certification criteria for eligibility to participate in the ~~MI/MR~~[Mental Illness or Mental Retardation] Supplement Program:

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

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

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

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

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

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

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

5. Be verified by the Office of Inspector General in accordance with Section 14(2) through (4) of this administrative regulation; and

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

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

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

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

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

(a) Receipt of verification from the Office of Inspector General as specified in Section 14(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

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

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

2. Lists the resident's Social Security number; and

3. Annotates the form, in order to maintain confidentiality, as follows with a:

a. Star indicating a resident has a mental illness or mental retardation diagnosis;

b. Check mark indicating a resident receives state supplementation; and

c. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and

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

1. Mail;

2. Fax; or

3. Electronically.

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

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

(b) Payment; and

(c) Audit purposes.

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

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

Section 13. Mental Illness or Mental Retardation Basic Training. (1)(a) To the extent cabinet funds are available to support the training, a personal care home's licensed nurse, or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities~~[Department for Mental Health, Developmental Disabilities, and Addiction Services]~~.

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

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

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

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

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation;

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation; and

(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall:

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

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

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

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

1. Has successfully completed certified medication technician training; and

2.a. Has received mental illness or mental retardation basic training; or

b. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities~~[The Department for Mental Health, Developmental Disabilities, and Addiction Services]~~ may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through a one (1) day workshop.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.

(d) Attendance of an advanced level training workshop shall be optional.

(6) The Department for Behavioral Health, Developmental and Intellectual Disabilities~~[The Department for Mental Health, Developmental Disabilities, and Addiction Services]~~ shall provide within

five (5) working days a:

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

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

(7) Unless staff turnover occurs as specified in subsection (4)(a) of this section, the department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the MI/MR~~[Persons with Mental Illness or Mental Retardation]~~ Supplement Program; and

(b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 14. MI/MR~~[Persons with Mental Illness or Mental Retardation]~~ Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/MR~~[Persons with Mental Illness or Mental Retardation]~~ Supplement Program.

(a) The personal care home's initial MI/MR~~[Persons with Mental Illness or Mental Retardation]~~ Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and

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

(b) After a personal care home's initial MI/MR~~[Persons with Mental Illness or Mental Retardation]~~ Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2 of this subsection.

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

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

(a) Observe and interview residents and staff; and

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

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (4) of this administrative regulation;

2. The personal care home:

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

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

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

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

b. Is on duty as specified in Section 12(1)(c)3 of this administrative regulation; and

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

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

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

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/MR~~[Persons with Mental Illness or Mental Retardation]~~ Supplement Program Certification Survey process.

(4) If thirty-five (35) percent of the population is mental illness or mental retardation clients, as specified in Section 12(1)(c)2 of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(6)(a) of this administrative regulation.

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

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

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

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

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

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

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

(b) Within ten (10) working days after the STS-2 is is-
sued[mailed].

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

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

Section 15. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

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

(a) "STS-1, Mental Illness or Mental Retardation (MI/MR) Supplement Program Application for Benefits", edition 1/09;

(b) "STS-2, Mental Illness or Mental Retardation (MI/MR) Supplement Program Notice of Decision to Personal Care Home", edition 1/09;

(c) "STS-3, Mental Illness or Mental Retardation (MI/MR) Supplement Program Monthly Report Form", edition 1/09; and

(d) "STS-4, Mental Illness or Mental Retardation (MI/MR) Supplement Certification Survey", edition 1/12[1/09].

(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.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 14, 2011

FILED WITH LRC: December 29, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 21, 2012 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 14, 2012, 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. The 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. You may submit written comments regarding this proposed administrative regulation until close of business February 29, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons requiring care in a personal care or family care home or receiving caretaker services in accordance with KRS 205.245.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the Mental Illness or Mental Retardation (MI/MR) Supplement Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program for persons who are aged, blind or have a disability and its compliance with an agreement with the Department of Health and Human Services to pass along the Supplemental Security Income cost of living adjustment to State Supplementation recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the eligibility requirements and standards of need for the State Supplementation Program for persons who are aged, blind or have a disability.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulations by increasing the standards of need for all levels of care in the State Supplementation Program for persons who are aged, blind or have a disability. The increase reflects the cost of living adjustment to be implemented in calendar year 2012 by the Social Security Administration for Supplemental Security Income (SSI) recipients. The amendment also makes technical corrections.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the agreement between the Commonwealth of Kentucky and the U.S. Department of Health and Human Services to pass along the cost of living adjustment in Supplemental Security Income benefits to State Supplementation Program recipients. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration notified the Department for Community Based Services of the amount of the Supplemental Security Income cost of living adjustment in October 2011. Technical corrections were necessitated to promote clarity and reflect organizational changes and other recent regulatory amendments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to authorizing statutes by complying with an agreement between Kentucky and the U.S. Department of Health and Human Services to pass along the cost of living adjustment for Supplemental Security Income to State Supplementation Program through an increase in the program's standard of need for all recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by passing along the 2012 3.6% cost of living adjustment for the Supplemental Security Income benefit by modifying the standard of need for all levels of care for the State Supplementation Program and making other technical corrections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administra-

tive regulation: As of October of 2011, there were 3,922 recipients receiving State Supplementation Program 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: The payment to a resident of a Personal Care Home is \$1,218 minus the personal care allowance of \$60 for the recipient. The payment to a resident of a Family Care Home is \$870 minus the personal care allowance of \$40 for the recipient. The payment to a caretaker of a single person is \$760. The payment to a caretaker of a couple, one requiring care, is \$1,109. The payment to a caretaker of a couple, both requiring care, is \$1,163. In all instances the State Supplementation payment made is the difference between the applicable standard of need and the countable income of the recipient.

(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 identified in question (3) or their care providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The recipients of the State Supplementation payment will receive the 3.6% cost of living adjustment implemented by the Social Security Administration.

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

(a) Initially: Although Kentucky will pass along the 3.6% federal cost of living adjustment by increasing the State Supplementation Program's standards of need, there will be no fiscal impact for the Cabinet for Health and Family Services to implement the mandated pass along of the 2012 SSI cost of living adjustment. Rather, recipients of the State Supplementation Program benefit will realize the federal SSI increase.

(b) On a continuing basis: Although Kentucky will pass along the 3.6% federal cost of living adjustment by increasing the State Supplementation Program's standards of need, there will be no fiscal impact for the Cabinet for Health and Family Services to implement the mandated pass along of the 2012 SSI cost of living adjustment. Rather, recipients of the State Supplementation Program benefit will realize the federal SSI increase.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds/Agency Funds are used to fund the State Supplementation Program's benefits.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not establish any fees. No increase in fees or funding is necessary to implement this administrative regulation.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1382 e-g
2. State compliance standards. KRS 194A.050 (1), 205.245
3. Minimum or uniform standards contained in the federal mandate. No.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None imposed

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,

service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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 Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 (1), 205.245, 42 U.S.C. 1382e-g

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 in the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

RELATES TO: KRS 164.518(3), 199.8941(4), 199.896(15) - (17), 199.8982(1)(a)6, (2), 200.151, 45 C.F.R. 98.200-744; 42 U.S.C. 601-619, 9831-9852

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(17), 199.8982(3), 200.703(3), EO 2011-534

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 200.703(3) requires the cabinet to implement programs funded by the Early Childhood Advisory Council established by Executive Order 2011-534 [Early Childhood Development Authority]. KRS 199.896(17) and 199.8982(3) require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials, including video-instruction material. This administrative regulation establishes the requirements for an individual to obtain a Kentucky Early Care and Education Trainer's Credential and identifies whom the credentialed individual may train.

Section 1. Definitions. (1) "Adult learning theory" means the concepts and principles that explain how adults gain knowledge and skills that result in relatively long-term changes in attitude and behavior. (2) "Childcare health consultant" is defined in 902 KAR 4:130.]

(2) [(3)] "Child Development Associate [development associate]" or "CDA" means the nationally recognized credential approved by the Council for Professional Recognition.

(3) "Clock hour" means a sixty (60) minute period of instruc-

tion.

(4) "Full-time, paid experience" means working at least thirty (30) hours per week or the equivalent in an early care and education setting.

(5) "Introduction to Kentucky Resources for Early Care and Education Trainers"["Trainer resource orientation"] means a cabinet-approved training for a potential trainer as specified in Section 2(1)(c)(3) of this administrative regulation.

(6) "Trainer's seminar" means a cabinet-approved educational seminar which includes training as specified in Section 4 of this administrative regulation.

Section 2. Eligibility Criteria for the Kentucky Early Care and Education Trainer's Credential. (1) An individual shall:

(a)(1) Be at least twenty-one (21) years of age;

(b)(2) Have a high school diploma, or equivalent;

(c)(3) Complete the two (2) clock hour Introduction to Kentucky Resources for Early Care and Education Trainers[trainer resource orientation] that provides an overview of:

1.(a) Early care and education systems in Kentucky; and

2.(b) Resources available to assist early care and education professionals;

(d)(4) Complete the two (2) clock hours of cabinet-approved training on the cabinet-designated data system; and

(e)(4) Have training or experience in the following topics of early care and education:

1.(a) Child growth and development;

2.(b) Health, safety, and nutrition;

3.(c) Professional development;

4.(d) Learning environments and curriculum;

5.(e) Child assessments;

6.(f) Family and community partnerships; and

7.(g) Program management and evaluation.

(2) A credentialed trainer approved prior to the effective date of this administrative regulation shall provide one (1) time verification that the trainer has received the cabinet-approved training on the cabinet-designated data system as a condition of renewal in accordance with Section 13 of this administrative regulation.

Section 3. Application and Approval for a Kentucky Early Care and Education Trainer's Credential. (1) An individual applying for a Kentucky Early Care and Education Trainer's Credential shall:

(a) Complete a ["DCC-200, Kentucky Early Care and Education Trainer's Credential Application"], which includes documentation that the individual meets the education and work experience requirements for a training level as specified in Sections 5 through 10 of this administrative regulation; and

(b) Submit the required documents of paragraph (a) of this subsection to the cabinet or its designee.

(2) Upon approval of the application described in subsection (1) of this section, the cabinet or its designee shall award the individual a:

(a) Letter of approval; and

(b) Kentucky Early Care and Education Trainer's Credential for a training level specified in Sections 5 through 10 of this administrative regulation.[(3) Until the renewal of a credential, a credentialed trainer shall maintain the same level of credential as the trainer held prior to the adoption of this administrative regulation.]

Section 4. Trainer's Seminar. An individual applying for[requesting] a Level 2 through 5 Kentucky Early Care and Education Trainer's Credential[for levels two (2) through five (5)] shall complete a seventeen (17) clock[fifteen (15)] hour trainer's seminar, also known as Fundamentals of Effective Training, consisting of the following areas:

(1) Core content and training levels;

(2) Principles of adult learning;

(3) Supporting transfer of learning;

(4) Ethics and professionalism;

(5) Needs assessment and evaluation;

(6) Training design and methods; and

(7) Conducive learning environments and organizational strategies.[(1) Principles of learning and barriers to learning;

(2) Ethics and professionalism;

(3) Assessment strategies;

(4) Learning styles and cultural differences;

(5) Designing and planning presentations;

(6) Strategies for instruction;

(7) Group dynamics and activities; con

(8) Creating and maintaining positive learning climates; and

(9) Effecting change in behavior.]

Section 5. Level 1 Kentucky Early Care and Education Trainer's Credential Requirements. For a Level 1 Kentucky Early Care and Education Trainer's Credential, an individual:

(1) Shall have three (3) years of full-time, paid experience in the early care and education field; and

(2) May only train as a cotrainer on a single topic of early care and education, as specified in Section 2(1)(e)(4) of this administrative regulation, with a credentialed trainer at a higher level.

Section 6. Level 2 Kentucky Early Care and Education Trainer's Credential Requirements. (1) For a Level 2 Kentucky Early Care and Education Trainer's Credential, an individual shall:

(a) Have:

1.a. A CDA or director's credential as specified in 922 KAR 2:230; and

b. Three (3) years of full-time, paid experience, or equivalent, as approved by the cabinet in the early care and education field; or

2. Ten (10) years of full-time, paid experience in a field related to early care and education as approved by the cabinet and the equivalent of forty-five (45) clock hours of formal early care and education training;[consisting of at least:

a. Forty-five (45) clock hours;

b. Four and one-half (4.5) continuing education units; or

c. Three (3) college credit hours;]

(b) Cotrain at least twelve (12) clock hours with a Level 4 or 5 Kentucky Early Care and Education[level four (4) or five (5)] trainer before training solo; and

(c) Complete the trainer's seminar requirements as specified in Section 4 of this administrative regulation, or equivalent, approved by the cabinet or its designee.

(2) An individual who is awarded a Level 2[level two (2)] Kentucky Early Care and Education Trainer's Credential may provide training to an individual[who is training] to meet the:

(a) Training requirements as specified in KRS 199.896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, or 2:250;

(b) Final sixty (60) hours required for the CDA if cotraining with a Level 4 or Level 5 credentialed trainer; or

(c) Level 1 or Level 2 Kentucky Early Care and Education Trainer's Credential.

Section 7. Level 3 Kentucky Early Care and Education Trainer's Credential Requirements. (1) For a Level 3 Kentucky Early Care and Education Trainer's Credential, an individual shall:

(a) Have:

1. Three (3) years of full-time, paid experience in the early care and education field and:

a. An associate degree in early care and education; or

b. The equivalent of thirty (30) credit hours in early care and education coursework;

2. One (1) year of full-time, paid experience in the early care and education field and a bachelor's degree in a field related to early care and education; or

3. Ten (10) years of full-time, paid experience in the early care and education field and a bachelor's degree in a field not related to early care and education; and[or 4. An associate degree in nursing, dietetics, or other cabinet-approved related field, if a childcare health consultant; and]

(b) Complete the trainer's seminar requirements as specified in Section 4 of this administrative regulation, or equivalent, as approved by the cabinet or its designee.

(2) An individual who is awarded a Level 3[level three (3)] Kentucky Early Care and Education Trainer's Credential may provide training to an individual[who is training] to meet the:

(a) Training requirements as specified by KRS 199.896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170,

2:180, 2:210, or 2:250;

(b) Requirements of the CDA; or

(c) Requirements of a level one (1) through three (3) Kentucky Early Care and Education Trainer's Credential.

Section 8. Level 4 Kentucky Early Care and Education Trainer's Credential Requirements. (1) For a Level 4 Kentucky Early Care and Education Trainer's Credential, an individual shall:

(a) Have:

1. One (1) year of full-time, paid experience in the early care and education field and a bachelor's degree in early care and education;

2. One (1) year of full-time, paid experience in the early care and education field and:

a. A bachelor's degree in a field related to early care and education; and

b. The equivalent of three (3) credit hours in child development; or

3. At least ten (10) years of full-time, paid experience in the early care and education field and:

a. A bachelor's degree in a field not related to early care and education; and

b. The equivalent of three (3) credit hours in child development; and/or

4. ~~A bachelor's degree in nursing, dietetics, or other cabinet-approved related field, if a childcare health consultant; and]~~

(b) Complete the trainer's seminar requirements as specified in Section 4 of this administrative regulation, or equivalent, as approved by the cabinet or its designee.

(2) An individual who is awarded a Level 4 Kentucky Early Care and Education Trainer's Credential may provide training to an individual~~[who is training]~~ to meet the:

(a) Training requirements as specified in KRS 199.896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, or 2:250;

(b) Requirements of the CDA; or

(c) Requirements for a Level 1 through Level 4 Kentucky Early Care and Education Trainer's Credential.

Section 9. Level 5 Kentucky Early Care and Education Trainer's Credential Requirements. (1) For a Level 5 Kentucky Early Care and Education Trainer's Credential, an individual shall:

(a) Have one (1) year of full-time, paid experience in the early care and education field and a:

1. Master's degree or higher in early care and education; or

2. Master's degree in a field related to early care and education with three (3) credit hours in child development or the equivalent; and/or

3. ~~Master level degree in nursing, dietetics, or other related field, if a childcare health consultant; and]~~

(b) Complete the trainer's seminar requirements as specified in Section 4 of this administrative regulation, or equivalent, as approved by the cabinet or its designee.

(2) An individual who is awarded a Level 5 Kentucky Early Care and Education Trainer's Credential may provide training to an individual~~[who is training]~~ to meet the:

(a) Training requirements as specified in KRS 199.896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, and 2:250;

(b) Requirements of the CDA; or

(c) Requirements for a Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

Section 10. Specialty Level Kentucky Early Care and Education Trainer's Requirements. (1) To receive a Specialty Level Kentucky Early Care and Education Trainer's Credential, an individual shall have in the individual's[their] area of expertise:

(a) A license, certification[certificate], or equivalent[credential]; and

(b) Three (3) years of related experience.

(2) A Specialty Level Kentucky Early Care and Education Trainer may provide training in the individual's[their] approved area of expertise to an individual who is training to meet the:

(a) Training requirements as specified in KRS 199.896(15) and

(16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, and 2:250;

(b) Requirements of the CDA; or

(c) Requirements for a Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

Section 11. General Training Requirements. (1) Except for an employee of a child care center program authorized by 42 U.S.C. 9831-9852, no owner or employee holding a Kentucky Early Care and Education Trainer's Credential shall train an employee of the same child care center or family care home to meet the training requirements:

(a) In KRS 199.896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, or 2:250;

(b) The CDA; or

(c) Of A Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

(2) The cabinet may monitor training events for compliance with this administrative regulation.

(3) A trainer shall have a current Kentucky Early Care and Education Trainer's Credential to be eligible to train individuals to meet the:

(a) Training requirements as specified in KRS 199.896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210 or 2:250;

(b) Requirements of the CDA; or

(c) Requirements of a Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

(4) Post-secondary early care and education coursework[A training] sponsored by an accredited[educational] institution of higher learning meets the training requirements as specified in:

(a) KRS 199.896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, or 2:250;

(b) The CDA; or

(c) A Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

(5) A training shall consist of a minimum of one (1) clock hour and may increase in fifteen (15) minute intervals.

(6) A training that is not conducted face-to-face between a trainer and trainee shall:

(a) Consist of a combination of alternative modes of delivery; and

(b) Not consist solely of:

1. Reading an article;

2. Reading an article and answering questions;

3. Watching a video; or

4. Watching a video and answering questions.

(7) A training shall be consistent with the principles of the trainer's seminar as specified in Section 4 of this administrative regulation.

Section 12. Maintenance of Records for Kentucky Early Care and Education Credentialed Trainer's. (1) Credentialed trainers shall:

(a) Enter records of training attendance and trainees into the cabinet-designated data system within ten (10) days of the training;

(b) Maintain records of training and trainees for three years; and

(c) Submit records of training provided and trainees to the cabinet upon request.

(2) All certificates issued by a credentialed trainer or an approved sponsor shall include the:

(a) Name of the training;

(b) Name of the sponsoring organization;

(c) Name of the trainee;

(d) Number of training clock hours completed;

(e) Training start and end date;

(f) Trainer:

1. Signature;

2. Credential number; and

3. Credential number expiration date; and

(g) Core content subject areas.

(3) Cabinet staff shall maintain a database of credentialed trainers[that is authorized to award various degrees, such as,

bachelor's, master's, or doctor's, is not required to possess a Kentucky Early Care and Education Trainer's Credential.]

Section 13[12]. Renewal of a Kentucky Early Care and Education Trainer's Credential. (1) A Level 1 Kentucky Early Care and Education Trainer's Credential shall:

- (a) Be valid for three (3) years; and
- (b) Not be renewable.

(2) A Level 2 through Level 5 Kentucky Early Care and Education Trainer's Credential[and Specialty Level Kentucky Early Care and Education Trainer's Credential] shall be renewed every three (3) years.

(3) A trainer renewing a Level 2 through Level 4 Kentucky Early Care and Education Trainer's Credential shall submit to the cabinet or its designee:

- (a) A completed DCC-200;[and]
- (b) Documentation of thirty (30) clock[forty-five (45)] hours of continuing education since the previous issue date of the credential to include:

1. A minimum of seven (7) clock hours of training on how to train other adults to include:

- a. Adult learning theory;
- b. Affecting change in behavior; or
- c. Organization of training;[Fifteen (15) hours in adult learning theory; and]

2. A minimum of eight (8) clock[Thirty (30)] hours in early care and education; and

3. Any remaining clock hours in training:

- a. As required for other related professional licensure, certification, or credential; or
- b. In accordance with subparagraph 1 or 2 of this paragraph; and

(c) Verification of cabinet-approved training on the cabinet-designated data system, as specified in Section 2 of this administrative regulation, if verification has not been previously provided.

(4) A trainer renewing a Level 5 Kentucky Early Care and Education Trainer's Credential shall submit to the cabinet or its designee:

- (a) A[a] completed DCC-200; and
- (b) Verification of cabinet-approved training on the cabinet-designated data system, as specified in Section 2 of this administrative regulation, if verification of the training has not been previously provided.

(5) A trainer renewing a Specialty Level Kentucky Early Care and Education Trainer's Credential shall:

- (a) Be renewed every three (3) years; and
- (b) Submit to the cabinet or its designee:

- 1.[(a)] A completed DCC-200;[and]
- 2.[(b)] Proof of current license, certification[certificate], or credential in the trainer's area of expertise; and

3. Verification of cabinet-approved training on the cabinet-designated data system, as specified in Section 2 of this administrative regulation, if verification has not been previously provided.

(6) Upon receipt and approval of the required documentation of subsections (3) through (5) of this section, the cabinet or its designee shall award the individual a:

- (a) Letter of approval; and
- (b) Renewed Kentucky Early Care and Education Trainer's Credential for the appropriate level.

Section 14[13]. Denial of Application or Renewal. (1) The cabinet shall deny a Kentucky Early Care and Education Trainer's Credential, if the individual fails to comply with:

- (a)[a-] Sections 2 through 4 of this administrative regulation; and
- (b)[b-] Section 5, 6, 7, 8, 9, or 10 of this administrative regulation.

(2) The cabinet shall not renew a Kentucky Early Care and Education Trainer's Credential for an individual who fails to comply with Section 13[12] of this administrative regulation.

(3)(a) Individuals denied a Kentucky Early Care and Education Trainer's Credential have the right to request a review of the denial by the Commissioner of the Department for Community Based Services or designee.

(b) A request for review shall be submitted to the commissioner or designee within ten (10) days of the denial.

(c) Upon completion of the review, the commissioner or designee shall issue a written order regarding the complaint within thirty (30) days unless:

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

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

(d) The individual shall abide by the order.

Section 15 [14]. Revocation of Credential. (1) The cabinet shall revoke a Kentucky Early Care and Education Trainer's Credential from a trainer who:

(a) Falsifies a record;

(b) Fails to comply with the requirements as specified in Section 11 or 12 of this administrative regulation; or

(c) Does not preserve the confidentiality of training and trainee records.[falsifies a record;]

(2) An individual whose credential has been revoked may:

(a) Request a hearing as specified in 922 KAR 1:320; or

(b) Reapply after a two (2) year period for a Kentucky Early Care and Education Trainer's Credential; [or]

(b) Request a hearing as specified in 922 KAR 1:320.]

Section 16[15]. Preapproval[Approval] of Conferences, Seminars,[and] Institutes, Workshops, and Online Early Care and Education Training. (1) A conference, seminar, institute, workshop, or online early care and education training[Conferences, seminars, and institutes] using a presenter[an individual] not holding a current Kentucky Early Care and Education Trainer's Credential shall apply to[be registered through] the cabinet for preapproval[approval] to offer training to meet requirements as specified in[train for]:

(a)[Training requirements as specified in] KRS 199.896(15) and (16), 199.898(2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, and 2:250;

(b)[Requirements of] The CDA; or

(c)[Requirements of] A Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

(2) Each training event using a presenter[trainer] not holding[approved for] a current Kentucky Early Care and Education Trainer's Credential shall apply thirty (30) days prior to the date of the training event. The cabinet shall make a determination within ten (10) working days of receipt of a complete application.

(3) An individual applying for[a] preapproval of a conference, seminar,[or] institute, workshop, or online training shall submit a completed:

(a)[A description of the event including:

1. Agenda;
2. Training topics; and
3. Overall objectives;

(b) Event's relevance to early care and education as described in Section 2(4) of this administrative regulation; and

(c) A completed "[] DCC-201, Application for Registration of Conference, Seminar,[and] Institute, or Workshop; or

(b) DCC-201a, Application for Registration of Online Training[]".

(4)(a) A presenter not holding a Kentucky Early Care and Education Trainer's Credential[Trainers] shall be identified; and

(b) A resume or vita for the presenter shall be attached to the application described in subsection (3)(a)[(c)] of this section.

(5) Approval for each presenter not holding a Kentucky Early Care and Education Trainer's Credential[invited speaker, keynote speaker, and platform participant] shall apply only to the training event approved by the cabinet.

(6) An individual not holding a Kentucky Early Care and Education Trainer's Credential may apply for a maximum of five (5) cabinet-approved training events per calendar year.

(7) Approval for each online training shall expire two (2) years from date of approval.

(8) A sponsor of an in-state approved conference, seminar, institute, workshop, or online early care and education training shall comply with Section 17 of this administrative regulation.

(9) If preapproval is denied, the decision may be reviewed.

upon request, by the Commissioner of the Department for Community Based Services or designee, in accordance with Sections 14(3)(a) through (c) of this administrative regulation.

(10) If a sponsor of an in-state approved conference, seminar, institute, workshop, or online early care and education training fails to comply with Section 17 of this administrative regulation, the cabinet shall deny preapproval of future training for two (2) years. If a nationally recognized organization holds a conference, seminar, or institute related to early care and education as described in Section 2(4) of this administrative regulation, the cabinet may:

- (a) Issue preapproval; and
- (b) Make a list of pre-approved conferences, seminars, and institutes available to the public.]

Section 17[46]. Maintenance of Records for Approved Conferences, Seminars, Institutes, Workshops, and Online Early Care and Education Training. (1) A sponsor of an approved conference, seminar, institute, workshop, or online training shall:

(a)1. Maintain records of each training provided and trainees to include:

- a. A copy of the DCC-201 or the DCC-201a; and
- b. The employer at the time of training for each trainee; and
- 2. Provide records on the training provided and trainees to the cabinet upon request; or

(b) Submit information from records required in paragraph (a) of this subsection into the cabinet-designated data system.

(2) Certificates issued for a conference, seminar, institute, workshop, or online early care and education training shall be in accordance with Section 12(2) of this administrative regulation.

(3) To the extent funds are available, the cabinet shall:

- (a) Maintain a list of pre-approved conferences, seminars, institutes, workshops, and online trainings or other early care and education trainings from a nationally recognized organization; and
- (b) Make the list available to the public.](4) Credentialed trainers shall:

- (a) Maintain records of training provided and trainees; and
- (b) 1. Provide records of training provided and trainees to the cabinet upon request; or
- 2. Enter information from records required in paragraph (a) of this subsection into the database provided by the cabinet.
- (2) Cabinet staff shall maintain a database of credentialed trainers.]

Section 18[47]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DCC-200, Kentucky Early Care and Education Trainer's Credential Application", edition 2012[04/06]; and
- (b) "DCC-201, Application for Registration of Conference, Seminar, [and] Institute, or Workshop", edition 2012; and
- (c) "DCC-201a, Application for Registration of Online Training", edition 2012[04/06].

(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.

PATRICIA R. WILSON, Commissioner

For JANIE MILLER, Secretary

APPROVED BY AGENCY: December 19, 2011

FILED WITH LRC: December 22, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 21, 2012, at 9:00 a.m. in the Health Services Auditorium A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 14, 2012, 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. The 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 regula-

tion. You may submit written comments regarding this proposed administrative regulation until close of business February 29, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing, phone (502) 564-3556

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements of the Kentucky Early Care and Education Trainer's Credential and identifies whom the credentialed trainer may train.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the trainer credentials for early care and education.

(c) How does this administrative regulation conform to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of requirements for the Kentucky Early Care and Education Trainer's Credential and identification of whom the credentialed trainer may train.

(d) How does 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 trainer requirements for early care and education.

(2) If 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 adds requirements regarding record maintenance and retention by credentialed trainers and the issuance of training certificates to trainees; revises requirements for the approval of training events not presented by a credentialed trainer, including online training; clarifies application and renewal requirements for credentialed trainers and review/appeal rights upon denial or revocation of a trainer's credential; reduces the overall number of continuing education hours for renewing trainers congruent with professional development requirements of other human service workers; and makes other 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 improve the state's capacity to retain and accurately report training data; improve instruction for new/renewing applicants of a trainer credential to enhance the pool and quality of trainers available to child care providers; ensure the ongoing relevance of the training content provided by trainers; and evolve policy to include new technologies, such as online trainings, and opportunities available through national and state partners while retaining standards for quality professional development in early care and education.

(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 update and clarification of requirements for credentialed early care and education trainers.

(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 and enhancing quality early care and education training.

(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 748 Kentucky Early Care and Education Credential Trainers. The Division of Child Care approved 158 trainings presented by a non-credentialed trainer. There are three companies approved to provide online trainings.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 be required to submit training records to the Cabinet or its designee or enter training records into the Cabinet's training record data system. In addition, training requirements for the initial application and renewal of a trainer's credential have been further specified and aligned to ensure the ongoing relevance of the trainer's training content. Presenters without a training credential and applicants for online training will be subject to revised preapproval, record, and training certificate requirements.

(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 should require minimal new efforts on the part of credentialed trainers or applicants and, therefore, should result in minimal, if any, new costs. Training on the cabinet-designated data system will be provided to existing credentialed trainers or applicants online without charge. Renewing trainers may actualize a reduction in continuing education costs due to a modest reduction in the number of hours required and the inclusion of training required for other professional licensure, certification, or credential. New and existing entities will have enhanced opportunity to provide professional development to early care and education providers, such as alternative modes of training delivery.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for a trainer's credential or renewal of a trainer's credential will benefit from the additional clarity contained within the revised application, opportunity for alternative modes of training delivery, and more consistent requirements across renewing trainer levels and professional types provided through this amendment. In addition, these applicants and current credentialed trainers will benefit from the enhanced capacity of the state to retain and report training data and more accessible web-based services. Others, such as applicants for training not presented by a credentialed trainer, will also benefit from improved clarity in requirements and opportunity for the approval of online training. Early care and education providers will benefit from improved quality standards, an anticipated larger pool of trainers and opportunities for training, and better access to accurate and inclusive training records.

(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: Early Childhood Development Funds (i.e., funds made possible through the Tobacco Settlement Agreement) support the direct implementation of this administrative regulation. Support of child care services in Kentucky is also made possible through the Child Care and Development Fund Block Grant.

(7) Provide an assessment of whether an 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 as a result of this amendment.

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

199.896(17), 199.8982(3), 200.703(3), EO 2011-534

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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, 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, additional or different responsibilities or requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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 Community Based Services is impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A/05091), 199.896(17), 199.8982(3), 200.703(3), 45 C.F.R. 98, 42 U.S.C. 601-619, EO 2011-534

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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? The amendment to this administrative regulation will generate no revenue in the subsequent years.

(c) How much will it cost to administer this program for the first year? The Kentucky Early Care and Education Trainer's Credential has existed since 2006. There will be no additional costs to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this 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:

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

**GENERAL GOVERNMENT CABINET
Kentucky Board of Prosthetics, Orthotics, and Pedorthics
(New Administrative Regulation)**

201 KAR 44:060. Continuing education requirements and procedures.

RELATES TO: KRS 319B.030(1)(g) and (2), KRS 319B.120(1)-(2)

STATUTORY AUTHORITY: KRS 319B.030(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1)(g) authorizes the board to promulgate administrative regulations establishing the continuing education requirements for licensees, which shall include the frequency of reporting, number of hours, types of courses, methods of proving compliance, penalties for violation, and all fees necessary for implementing the continuing education process. This administrative regulation establishes continuing education requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means an approved credit earned based on sixty (60) minutes of participation in a prosthetics, orthotics, or pedorthics-related activity.

(2) "Continuing education" means a planned learning experience relating to the scope of prosthetics, orthotics, or pedorthics practice as defined by KRS 319B.010(13), (18), and (21) and if the subject is intervention, examination, research, documentation, education, or management of health care delivery systems.

(3) "Jurisprudence Examination" means an open book tutorial provided by the board on current prosthetics, orthotics, and pedorthics statutes and administrative regulations.

Section 2. (1) A licensee applying for renewal shall have completed the continuing education requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continuing education shall be based on contact hours awarded.

(a) For a licensed prosthetist, the board shall require ten (10) contact hours as a condition of licensure renewal. These hours shall be obtained as follows:

1. One (1) hour shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least seven (7) hours shall be earned from Category 1 described in subsection (2) of this section; and

3. No more than three (3) hours may be earned from Category 2 described in subsection (3) of this section.

(b) For a licensed orthotist, the board shall require ten (10) contact hours as a condition of renewal. These hours shall be obtained as follows:

1. One (1) hour shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least seven (7) hours shall be earned from Category 1 described in subsection (2) of this section; and

3. No more than three (3) hours may be earned from Category 2 described in subsection (3) of this section.

(c) For a licensed prosthetist-orthotist, the board shall require fifteen (15) contact hours as a condition of renewal. These hours shall be obtained as follows:

1. One (1) hour shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least twelve (12) hours shall be earned from Category 1 described in subsection (2) of this section; and

3. No more than three (3) hours may be earned from Category 2 described in subsection (3) of this section.

(d) For a licensed pedorthotist, the board shall require eight (8) contact hours as a condition of licensure renewal. These hours shall be obtained as follows:

1. One (1) hour shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least six (6) hours shall be earned from Category 1 described in subsection (2) of this section; and

3. No more than two (2) hours may be earned from Category 2 described in subsection (3) of this section.

(e) For a licensed fitter - orthotics, the board shall require seven (7) contact hours as a condition of licensure renewal. These hours shall be obtained as follows:

1. One (1) hour shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least six (6) hours shall be earned from Category 1 described in subsection (2) of this section; and

3. No more than one (1) hour may be earned from Category 2 described in subsection (3) of this section.

(2) Category 1 continued competency shall be any of the following:

(a) Completion of courses, seminars, workshops, or symposia consisting of at least three (3) contact hours that have been approved by the board, the board's designee, the Kentucky Orthotics Prosthetics Association, the American Board of Certification for Orthotics Prosthetics and Pedorthics, Inc., the Board of Certification/Accreditation International, or any of their components, or any other prosthetics, orthotics, or pedorthics licensing agency;

(b) Completion or auditing of an accredited postsecondary educational institution credit course in the field of orthotics, prosthetics, or pedorthotics.

1. Fifteen (15) contact hours shall be awarded for each semester completed.

(c) Presentation of continuing education courses, workshops, seminars, or symposia that have been approved by the board or its designee;

(d) Authorship of a research article, manuscript, or scientific paper, published in the biennium and related to prosthetics, orthotics, or pedorthotics. Four (4) contact hours shall be awarded with a maximum of two (2) events per year;

(e) A presented scientific poster or scientific platform presentation related to prosthetics, orthotics, or pedorthotics. Three (3) contact hours shall be awarded per event with a maximum of two (2) events per year;

(f) Teaching part of a prosthetics, orthotics, or pedorthics credit course if that teaching is not the primary employment of the licensee. A maximum of two (2) contact hours per year shall be awarded;

(g) Completion of a clinical residency director or clinical fellowship program. Not more than five (5) contact hours shall be awarded per year, per resident with a maximum of ten (10) contact hours per year;

(h) Engaging in the practice of prosthetics, orthotics, or pedorthics as defined by KRS 319B.010(13), (18), and (21) at least 1,000 hours per biennium. One (1) contact hour shall be awarded per year;

(i) Engaging in the instruction in a Commission on Accreditation of Allied Health Education Programs-accredited program at least 1,000 hours per biennium. One (1) contact hour shall be awarded per year;

(k) Appointment to the Kentucky Board of Prosthetics, Orthotics, and Pedorthics. Two (2) contact hours shall be awarded per year;

(l) Election or appointment to a position of the Kentucky Orthotics Prosthetics Association, the American Board of Certification for Orthotics Prosthetics and Pedorthics, Inc., the Board of Certification/Accreditation International, as an officer or committee chair. Two (2) contact hours shall be awarded per biennium; or

(m) Member of a committee or task force for one (1) of the organizations in paragraph (k) or (l) of this subsection. One (1) contact hour shall be awarded per year.

(3) Category 2 continuing education shall be any of the following:

(a) Self-instruction from reading professional literature or home study program. One half (1/2) contact hour shall be awarded per year;

(b) Clinical instructor for a Commission on Accreditation of Allied Health Education Programs-approved educational program. Continued competency shall be one (1) contact hour yearly per resident;

(c) Participation in a prosthetics, orthotics, or pedorthics in-service or study group consisting of two (2) or more licensees. A

maximum of One (1) contact hour shall be awarded per year;

(d) Participation in community service related to health care. A maximum of one (1) contact hour of continued competency shall be awarded yearly; or

(e) Member of the American Board of Certification for Orthotics Prosthetics and Pedorthics, Inc., or The Board of Certification/Accreditation International, one half (1/2) contact hour shall be awarded per year.

(f) Member of the Kentucky Prosthetics and Orthotics Association, one (1) contact hour shall be awarded per year.

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continuing education requirements of this administrative regulation for a period of three (3) years from the end of the license year;

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continuing education activities to the board; and

(c) A licensee who fails to provide evidence of the continuing education activities or who falsely certifies completion of continuing education activities shall be subject to disciplinary action pursuant to KRS 319B.140(1)(d) and (e).

(5) Exemption and extension.

(a) A licensee shall be granted a temporary hardship extension for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Extension of Time for Completion of Continuing Education Form, including a plan describing how the required credits will be met; and

2. Submits documentation showing evidence of undue hardship by reason of the licensee's:

- a. Age;
- b. Disability;
- c. Medical condition;
- d. Financial condition; or
- e. Other clearly mitigating circumstance.

(b) A licensee shall be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and if the licensee:

1. Files a completed Extension of Time for Completion of Continuing Education Form, including a plan describing how the required credits will be met, by December 31 of the year in the renewal cycle for which the extension is sought;

2. Pays a fee of \$250;

3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

4. Files proof of compliance with the continuing competency requirements by the following July 1.

(c) A licensee on active military duty shall be granted an exemption from continuing education requirements as mandated by KRS Chapter 12.

Section 3. Incorporation by Reference. (1) "Extension of Time for Completion of Continuing Education Form", December 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: January 12, 2012

FILED WITH LRC: January 13, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2012, at 1:30 p.m., local time, at the Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters, 911 Leawood Drive, 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 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 close of business February 29, 2012. 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: Tony Crockett, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tony Crockett

(1) Provide a brief summary of: Establishes requirements for licenses to maintain continuing education.

(a) What this administrative regulation does: Sets the frequency of reporting, number of hours, types of courses, methods of proving compliance, penalties for violation, and sets fees necessary for implementing the continuing education process.

(b) The necessity of this administrative regulation: To establish continuing education requirements and procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319B.030(1)(g) requires the board to promulgate administrative regulations to establish the continuing education requirements for licensees, which shall include the frequency of reporting, number of hours, types of courses, approval of courses, methods of proving compliance, penalties for violation, and all fees necessary for implementing the continuing education process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the requirements for continuing education, including the frequency of reporting, number of hours, types of courses, approval of courses, methods of proving compliance, penalties for violation, and all fees necessary for implementing the continuing education process.

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

(a) How the amendment will change this existing administrative regulation: This 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: Approximately 150 persons are expected to seek licensure from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation establishes continuing education requirements including the frequency of reporting, number of hours, types of courses, approval of courses, methods of proving compliance, penalties for violation, and all fees necessary that a licensee shall complete for renewal of current license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost estimate is between \$0-\$100 per hour of continuing education.

Licensed Prosthetist – 10 hours per year (\$0-\$10,000)

Licensed Orthotist – 10 hours per year (\$0-\$10,000)

Licensed Prosthetist-Orthotist – 15 hours per year (\$0-\$15,000)

Licensed Pedorthist – 8 hours per year (\$0-\$8,000)

Licensed Orthotic Fitter – 7 hours per year (\$0-\$7,000)

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Renewing applicants for licensure will have their applications reviewed to establish that the applicant has maintained the continuing education requirements.

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

(a) Initially: There will be no cost, as this will only be required upon renewal of licenses.

(b) On a continuing basis: Estimated to be between \$1-\$5,000 to review the continuing education compliance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees 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: This administrative regulation is the continuing education regulation.

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

(9) TIERING: Is tiering applied? Yes. The number of continuing education hours are different for the levels of licensure based on the levels of education and scope of practice. The number of hours required is higher for the greater level of education and the larger the scope of practice per licensee.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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 Prosthetics, Orthotics and Pedorthics Licensing Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319B.030(1)(g).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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?

(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

Kentucky Board of Prosthetics, Orthotics, and Pedorthics (New Administrative Regulation)

201 KAR 44.070. Complaint process and disciplinary action procedure.

RELATES TO: KRS 319B.040(2)-(5); KRS 319B.110; KRS 319B.140(1)-(3)

STATUTORY AUTHORITY: KRS 319B.040(2)-(5); KRS 319B.110; KRS 319B.140(1)-(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.110 prohibits unlicensed persons from engaging in the practice of Prosthetics, Orthotics, or Pedorthics or using the title of, Licensed Prosthetist, Licensed Orthotist, Licensed Pedorthist, or Licensed Fitter-orthotics. KRS 319B.140(1)(a)-(e) sets forth the causes for which disciplinary action may be taken against a license holder. KRS 319B.140(3)(b) authorizes the board to seek injunctive relief to stop the unlawful practice of prosthetics, orthotics, and pedorthics by unlicensed persons. KRS 319B.150(2) sets forth the criminal penalty for violations. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of complaints.

Section 1. Definitions. (1) "Act" means Chapter 319B of the Kentucky Revised Statutes.

(2) "Board" is defined in KRS 319B.010(1), and for purposes of this administrative regulation, shall also refer to a hearing panel.

(3) "Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319B or the administrative regulations promulgated thereunder.

(4) "Complaint Committee" means the committee appointed pursuant to Section 2 of this administrative regulation.

(5) "Formal complaint" means a formal administrative pleading or notice of administrative hearing authorized by the board that sets forth charges against a licensed holder or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(6) "Initiating complaint" means any allegation alleging misconduct by a licensee or applicant or alleging that an unlicensed person is engaging in the practice of prosthetics, orthotics or pedorthics, or using the title prosthetist, orthotist, pedorthist, or orthotic fitter.

(7) "Order" means the whole or any part of a final disposition of a hearing.

(8) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.

(9) "Presiding officer" means the person appointed by the board to preside at a hearing pursuant to KRS 319B.140(2) and KRS Chapter 13B, and shall include either a hearing officer or a member of the hearing panel.

(10) "Respondent" means the person against whom an initiating or a formal complaint has been made.

Section 2. Initiating Complaint.(1) Source of initiating complaint. An initiating complaint may be initiated by the board, by the public or by any governmental agency. A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid initiating complaint.

(2) Form of initiating complaint. Initiating complaints shall:

(a) Be in writing;

(b) Clearly identify the person against whom the initiating complaint is being made;

(c) Contain the date;

(d) Identify by signature the person making the initiating complaint, and;

(e) Contain a clear and concise statement of the facts giving rise to the initiating complaint.

(3) Receipt of initiating complaint. An initiating complaint may be received by:

(a) Any board member;

(b) The Office of the Attorney General, or;

(c) Any staff member of the Board.

(4) Reply of respondent. A copy of the initiating complaint shall be mailed to the respondent. The respondent shall file with the board a written response to the initiating complaint:

(a) Within fifteen (15) days of the date on which the initiating complaint was mailed, or;

(b) Thirty (30) days upon written request of the respondent documenting good cause for an extension of time to respond.

(5) Complaint Committee.

(a) The Complaint Committee shall consist of no more than two

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(2) Board members appointed by the Chair of the Board to:

1. Review initiating complaints, responses, and investigative reports;

2. Participate in informal proceedings to resolve formal complaints; and

3. Make recommendations for disposition of initiating complaints and formal complaints to the full Board.

(b) The Complaint Committee may be assisted by the Board staff and counsel to the Board.

(6) Consideration of initiating complaint. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or the complaint committee shall review the initiating complaint and response. The board shall determine if an investigation is warranted, and if so, the board may appoint any agent or representative of the board to conduct an investigation of the initiating complaint.

(7) Order for Status Examination.

(a) If there is reasonable cause to believe that a licensee or applicant for a license may be physically or mentally impaired, and may not be able to practice with reasonable skill and safety to the public, the board may order the licensee or applicant:

1. To submit to an examination by a psychologist or a physician designated and paid by the board, and;

2. To determine the licensee's or applicant's mental or physical health to practice prosthetics, orthotics, or pedorthics.

(b) The Board shall then consider the findings and conclusion of the examination and the final investigative report, if any, at its next regularly-scheduled meeting or soon thereafter.

(8) Investigation.

(a) The person about whom the initiating complaint has been considered shall be contacted. With the consent of the respondent, a meeting may be scheduled at which time he or she may respond further to the allegations of the initiating complaint. The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Consideration of complaint and investigative report. Based on consideration of the complaint, the investigative report, if any, and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act. If it is determined that the facts alleged in the initiating complaint or investigative report do not constitute a prima facie violation of the statute or administrative regulations, the board shall notify the person making the initiating complaint and the respondent that no further action shall be taken at the present time. If it is determined that there is a prima facie violation of KRS 319B.140 or administrative regulations, the board shall issue a formal complaint against the licensee or applicant. In the case of a prima facie violation of KRS 319B.110 and the Respondent is not a licensee or an applicant, the board shall:

1. Issue a cease and desist order;

2. File suit to enjoin the violator pursuant to KRS 319B.040(3), or;

3. Seek criminal prosecution pursuant to KRS 319B.150.

Section 3. Formal Complaint. If the board votes to file a formal complaint, a notice of administrative hearing shall be filed as required by KRS 13B.050(1) and (3).

Section 4. Formal Response. Within twenty (20) days of service of the notice of administrative hearing, the respondent shall file with the board a written response to the specific allegations set forth in the notice of administrative hearing. Allegations not properly responded to shall be deemed admitted. The board may, for good cause, permit the late filing of a response.

Section 5. Composition of the Hearing Panel. (1) Disciplinary actions shall be heard by a hearing officer and:

(a) The board or a quorum of the board;

(b) A hearing panel consisting of at least one (1) board member appointed by the board, or;

(c) The hearing officer alone under the provisions of KRS 13B.030(1).

Section 6. Administrative Disciplinary Fine. If the board finds against the respondent on any charge, an administrative disciplinary fine in an amount not to exceed \$10,000 per violation shall be assessed against the respondent.

Section 7. Notification of Action Taken. (1)The Board shall make public:

(a) Its final order in any disciplinary action, and;

(b) Any action taken pursuant to section 2(8)(c)(i-iii).

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: January 12, 2012

FILED WITH LRC: January 13, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2012, at 1:30 p.m., local time, at the Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters, 911 Leawood Drive, 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 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 close of business February 29, 2012. 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: Tony Crockett, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tony Crockett

(1) Provide a brief summary of: Establishes the requirements for the complaint procedure and disciplinary action procedure

(a) What this administrative regulation does: Prohibits unlicensed persons from engaging in the practice of Prosthetics, Orthotics, Pedorthics or using the title of, Licensed Prosthetist, Licensed Orthotist, Licensed Pedorthotist, or Licensed Fitter-orthotics. Sets forth the causes for which disciplinary action may be taken against a license holder, and authorizes the board to seek injunctive relief to stop the unlawful practice and sets forth the criminal penalty for violation.

(b) The necessity of this administrative regulation: This administrative regulation is to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of complaints.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319B.040(2)-(5); KRS 319B.110; KRS319B10(1)-(3) Prohibits unlicensed persons from engaging in the practice of Prosthetics, Orthotics, Pedorthics or using the title of, Licensed Prosthetist, Licensed Orthotist, Licensed Pedorthotist, or Licensed Fitter-orthotics. Sets forth the causes for which disciplinary action may be taken against a license holder, and authorizes the board to seek injunctive relief to set the unlawful practice and sets forth the criminal penalty for violation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation delineates the complaint procedure and disciplinary action procedure.

(2) If 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: Approximately 150 persons are expected to seek licensure from the board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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: Comply with all requests to address a complaint for 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 cost is limited to \$10,000 per violation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A thorough and accurate process for complaints filed.

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

(a) Initially: They would only be incurred with a complaint filed

(b) On a continuing basis: The cost would be estimated to be between \$1-\$5,000 per year, but would be based on the number of complaints filed.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees 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:

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

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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 Prosthetics, Orthotics and Pedorthics Licensing Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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?

(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 Kentucky Board of Prosthetics, Orthotics, and Pedorthotics (New Administrative Regulation)

201 KAR 44:080. Renewals.

RELATES TO: KRS 319B.120(1)-(3)

STATUTORY AUTHORITY: KRS 319B.120(1)-(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.120(1)-(3) establish conditions for the renewal of licenses and reinstatement of expired licenses. KRS 319B.120(1)-(3) authorize the board to promulgate administrative regulations required to set forth the renewal and reinstatement of licenses. This administrative regulation establishes procedures for the renewal of licenses.

Section 1. Renewal. (1) A Licensed Prosthetist, Licensed Orthotist, Licensed Pedorthist or Licensed Fitter-orthotics shall annually, on or before June 30:

(a) File a completed renewal application;

(b) Submit proof of completion of continuing education established by 201 KAR 44:060, and;

(c) Pay to the board the renewal fee established by 201 KAR 44:030.

Section 2. Grace Period. (1) A six (6) month grace period shall apply beginning July 1, during which a Licensed Prosthetist, Licensed Orthotist, Licensed Pedorthist or Licensed Fitter-orthotics may:

(a) Continue to practice during the six (6) month grace period, and;

(b) Renew his or her license upon payment of the late renewal fee established in 201 KAR 44:010, and;

(c) Complete the requirements of Section 1(1)(a) and (b) of this administrative regulation.

Section 3. Expiration of License (1) A license that is not renewed before December 31 shall be expired for failure to renew.

(2) Upon expiration for failure to renew, the Licensed Prosthetist, Licensed Orthotist, Licensed Pedorthist or Licensed Fitter-orthotics shall not practice prosthetics, orthotics, or pedorthics in the Commonwealth of Kentucky.

(3) The Board shall:

1. Notify in writing the Licensed Prosthetist, Licensed Orthotist, Licensed Pedorthist or Licensed Fitter-orthotics at the last known address of record of the expiration for failure to renew, and;

2. Instruct in writing the person whose license has expired to cease and desist practice.

Section 4. Reinstatement. (1) After January 1, a person whose license has expired for failure to renew, may have his or her license reinstated upon:

(a) Payment of the reinstatement fee as provided by 201 KAR 44:010,

(b) Completion of the Application for Reinstatement; and

(c) Documentation of employment from the time of expiration of employment until the present, and;

(d) Completion of the current requirements for licensure.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Renewal Application for Licensed Prosthetist, Licensed Orthotist, Licensed Pedorthist or Licensed Fitter-orthotics (December 2011 edition);

(b) Reinstatement Application for Registration as Licensed Prosthetist, Licensed Orthotist, Licensed Pedorthist or Licensed Fitter-orthotics (December 2011 edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Prosthetics, Orthotics, Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

SIENNA NEWMAN, Chair

VOLUME 38, NUMBER 8 – FEBRUARY 1, 2012

APPROVED BY AGENCY: January 12, 2012

FILED WITH LRC: January 13, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2012, at 1:30 p.m., local time, at the Kentucky Board of Licensure for Orthotists, Prosthetists, Orthotists/Prosthetists, Pedorthists, or Orthotic Fitters, 911 Leawood Drive, 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 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 close of business February 29, 2012. 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: Tony Crockett, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tony Crockett

(1) Provide a brief summary of: Established conditions for renewal, expiration, and reinstatement for licenses.

(a) What this administrative regulation does: Set procedures for the renewal of a Licensed Prosthetist, Licensed Orthotist, Licensed Pedorthist, or Licensed Fitter-orthotics.

(b) The necessity of this administrative regulation: To establish procedures for the renewal of license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319B.120(1)-(3) authorizes the board to promulgate administrative regulation required to set forth the renewal, expiration, and reinstatement procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the renewal of a Licensed Prosthetist, Licensed Orthotist, Licensed Pedorthist, or Licensed Fitter-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: 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: Approximately 150 persons are expected to seek licensure from the board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 licensees will be required to annually renew their license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Annually the renewal fee is

Licensed Prosthetist – \$250

Licensed Orthotist – \$250

Licensed Prosthetist-Orthotist – \$250

Licensed Pedorthist – \$200

Licensed Orthotic Fitter – \$150

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Maintain and active license in their field of discipline and continue to practice.

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

(a) Initially: This will only be effective for renewals

(b) On a continuing basis: Estimated to be \$1-\$5000 per renewal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees 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: The board's operation is funded by fees paid by the licensees and applicants.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation did not establish the fees, it only gave procedures for renewals

(9) TIERING: Is tiering applied? Yes. The number amount of the renewal fee is different for the levels of licensure based on the levels of education and scope of practice. The number of cost required is higher for the greater level of education and the larger the scope of practice per licensee.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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 Prosthetics, Orthotics and Pedorthics Licensing Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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?

(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:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (New Administrative Regulation)

501 KAR 6:250. Graduated sanctions for technical violations of probation and compliance incentives system.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 439.3106, 439.3107, 439.3108, 439.470, 439.551, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 439.3106, 439.3107, 439.3108, 439.470, and 439.551 authorize the Justice and Public Safety Cabinet and Department of Correc-

tions to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions and to establish a system or graduation sanctions for probation violations. This administrative regulation establishes graduated sanctions for responding to violations of probation.

Section 1. Definitions. (1) "Conditions of supervision" or "conditions of probation" means general and specific directives given to an offender placed on probation by the sentencing judge or the Division of Probation and Parole.

(2) "Division" means the Kentucky Department of Corrections Division of Probation and Parole.

(3) "Graduated sanctions" is defined in KRS 446.010.

(4) "High risk behavior" means a lifestyle activity that places a person at risk of suffering a particular harmful condition.

(5) "New criminal violation" means conduct constituting a violation of criminal law whether or not it has led to new criminal charge(s) and which occurred after the offender was placed on community supervision.

(6) "Offender" means a person placed under the supervision of the division by a court with jurisdiction over the sentence.

(7) "Officer" or "probation and parole officer" means a person employed by the division who supervises, counsels, and directs an offender on probation.

(8) "Revocation" means an offender having his probation ended and being incarcerated as a result of a hearing for violations of conditions of supervision.

(9) "Releasing authority" means the court with jurisdiction over the sentence that granted probation.

(10) "Risk and needs assessment" is defined in KRS 446.010(35).

Section 2. Application of Graduated Sanctions. If the sentencing court orders the offender to be subject to graduated sanctions as part of the conditions of his probation, then to the extent that this administration regulation is not in conflict with the orders of the court, graduated sanctions shall be applied as follows:

(1) The officer shall consider the:

- (a) Offender's assessed risk and needs level;
- (b) Offender's adjustment on supervision;
- (c) Severity of the current violation;
- (d) Seriousness of the offender's previous criminal record;
- (e) Number and severity of any previous supervision violations;

and

(f) Extent to which graduated sanctions were imposed for previous violations.

(2) The officer shall review the circumstances of the offender and the violations at issue to determine if the violation behavior is appropriately responded to with graduated sanctions.

(a) Informal Response. In lieu of graduated sanctions, the officer may resolve the following minor violations through an informal case management strategy:

- 1. Missing scheduled report day,
- 2. Traffic offense without arrest,
- 3. Failure to seek employment,
- 4. Failure to enroll or maintain school attendance, and
- 5. Failure to notify officer prior to change of address.

(b) Violations which shall be returned to the releasing authority.

Graduated sanctions shall not be used by the officer and violation documentation shall be submitted to the releasing authority for violation proceedings up to and including revocation for the following violations:

- 1. Absconding supervision;
- 2. New felony conviction;
- 3. New misdemeanor conviction of assault;
- 4. New misdemeanor conviction of violation of emergency protective or domestic violence order;
- 5. New misdemeanor conviction for sexual offense;
- 6. New misdemeanor conviction for driving under the influence;
- 7. Possession of a firearm;
- 8. Failure to complete sex offender treatment program;
- 9. Demonstrated pattern of failure to comply with conditions of supervision; or
- 10. Violations of an assaultive nature.

(3) If a determination is made by the officer to proceed with graduated sanctions, then the officer shall review the probation and parole violation matrix in Section 5 of this administrative regulation to impose sanctions.

(4) The officer shall identify the seriousness of the violation behavior using the matrix.

(a) If there are multiple violations, the officer shall use the most serious violation for the review for sanctions.

(b) If the possible sanctions in a response range have been exhausted on previous violations, the officer may use sanctions in the next highest response range.

(c) If the offender has violated conditions of supervision imposed in more than one case (i.e., multiple cases from a single jurisdiction, cases from multiple jurisdictions, or on supervision for probation and parole or other form of community supervision), the officer shall determine the criminal conviction in the case for which the graduated sanctions will be imposed. A graduated sanction shall not be imposed on more than one case at a time and cases shall not be sanctioned separately for individual violations arising from the same series of violations.

(5) In order to determine the range of sanctions that may be imposed, the officer shall:

(a) Determine the offender's risk and needs level based on the offender's most recent risk and needs assessment;

(b) Use the probation and parole violation matrix in Section 5 of this administrative regulation to cross reference the violation behavior category as determined in Section 2(4) with the offender's risk and needs level to determine the sanctions available in the indicated response range.

(6) If the officer determines that the indicated response range or a lower response range contains an appropriate sanction for the circumstances of the violation, then the officer shall impose the sanction.

(7) The officer shall seek approval from the supervisor, if the officer determines that:

(a) More than two sanctions from response range 3 or higher are appropriate for the circumstances of the violation;

(b) The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends imposing sanctions from a higher response range;

(c) The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends revocation; or

(d) Interventions not included in the matrix are appropriate for the circumstances of the violation.

(8) Upon receiving a recommendation for graduated sanctions which requires approval before being implemented,

(a) The district supervisor or designee shall review the recommendation and may:

- 1. Approve the recommendation; or
- 2. Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.

(b) The officer shall document the action in the offender management system.

(9) If the officer determines that the offender has failed to comply with graduated sanctions and further implementation of graduated sanctions would be futile, the officer shall seek approval from the district supervisor or designee to submit violation documentation to the releasing authority for violation proceedings.

(10) Upon receiving a recommendation to submit violation documentation to the releasing authority for violation proceedings,

(a) The district supervisor or designee shall review the recommendation and:

- 1. Approve the recommendation; or
- 2. Reject the recommendation and refer the violation back to the officer for alternative sanctions.

(b) The officer shall document the action in the offender management system.

Section 3. Minor Violations. Minor violations shall include but are not limited to the following:

- (1) Failure to report a citation or arrest;
- (2) Failure to report;

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- (3) Being in an establishment where alcohol is sold as a primary commodity;
- (4) Traffic offenses unless arrested;
- (5) Failure to pay financial obligations as ordered by the releasing authority;
- (6) Failure to seek employment;
- (7) Failure to enroll or maintain school attendance;
- (8) Falsifying a release report;
- (9) Violation of other special conditions unless ordered by releasing authority;
- (10) Association with convicted felon;
- (11) Violation of travel restrictions;
- (12) Visiting a correctional facility without prior approval;
- (13) Issuance of an Emergency Protective Order or Domestic Violence Order;
- (14) Violation of curfew;
- (15) First or second positive drug or alcohol test;
- (16) Failure to comply with re-entry programming; and
- (17) Other violations of similar magnitude.

Section 4. Major Violations. Major violations shall include but are not limited to the following:

- (1) Misdemeanor or felony conviction;
- (2) Absconding supervision;
- (3) Failure to comply with treatment;
- (4) Multiple minor violations within ninety (90) days;
- (5) Multiple positive drug or alcohol tests or high risk behavior;
- (6) Refusal to submit to an alcohol or drug test;
- (7) Intimidating or threatening a probation and parole officer;
- (8) Possession or use of a weapon by an offender;
- (9) Failure to comply with sex offender registry;
- (10) Over three (3) months behind on restitution;
- (11) Violation of a special condition ordered by the releasing authority;
- (12) Violation of travel restrictions to another state;
- (13) Violation of curfew with electronic monitoring device;
- (14) Change of residence without officer's permission;
- (15) Failure to notify probation and parole officer about address change; and
- (16) Other violations of similar magnitude.

Section 5. Probation and Parole Violation Matrix. The following matrix shall be used to determine allowable graduated sanctions for probation violations.

| PROBATION AND PAROLE VIOLATION MATRIX | | | | | |
|--|--|-------------|--|--|--------------|
| OFFENDER RISK LEVEL | | | | | |
| VIOLATION | Very High | High | Moderate | Low | Admin |
| 1st Minor | 2 | 1 | 1 | 1 | 1 |
| 2nd Minor | 3 | 2 | 2 | 2 | 1 |
| 3rd (more) Minor | 4 | 3 | 3 | 2 | 2 |
| 1st Major | 4 | 3 | 3 | 2 | 2 |
| 2nd Major | 4 | 3 | 3 | | |
| 3rd (more) Major | 4 | 4 | 4 | | |
| Response Range 1 | Response Range 2 Any response or combination of responses in range 1 or: | | Response Range 3 Any response or combination of responses in range 1-2 | Response Range 4 Any response or combination of responses in range 1-3 | |

| | | or: | or: |
|---|--|---|---|
| Verbal or Written Warning | Curfew up to 60 days | Curfew up to 120 days | Curfew up to 180 days |
| Increased Reporting | Community Service 20-30 hours | Community Service 30-40 hours | Community Service 40-50 hours |
| Increase Frequency of Drug Testing | Electronic Monitoring | Halfway House | Jail Time up to 60 days (requires hearing with releasing authority) |
| Increase Level of Supervision | Increased Treatment Up To Residential | Jail Time up to 30 days (requires hearing with releasing authority) | Request Revocation |
| Loss of Travel or Other Privileges | Discretionary Detention up to 10 days with Supervisor Approval | | |
| Curfew up to 30 days | | | |
| Referral to the Social Service Clinician for substance abuse assessment and treatment | | | |
| Referral to Community Service Agency for Counseling or Treatment | | | |
| Community Service up to 8 hours | | | |
| *Upon consideration of the totality of the circumstances and with supervisory approval, the officer may direct the offender into appropriate interventions not included in the violation matrix or seek to impose a high lever sanction, up to and including revocation. | | | |

Section 6. Documentation and Notice of Graduated Sanctions.

(1) Prior to imposing the graduated sanctions, the officer shall prepare a probation violation report. The report shall include:

- (a) A description of the violation behavior;
- (b) A description of the sanctions which will be imposed; and
- (c) Notice of the offender's right to:

1. A violation hearing before the court;
2. Representation by an attorney at the hearing; and
3. Have an attorney appointed for him at state expense if he cannot afford one.

(2) The officer shall:

- (a) Provide a copy of the probation violation report to the offender prior to the imposition of sanctions;
- (b) Ask the offender if he can read the probation violation re-

port. If the offender states that he cannot read, then the officer shall read the report to the offender.

(c) Ask the offender if he can understand English. If the offender informs the officer that he cannot understand English, the officer shall provide the offender with a probation violation report in the offender's language or a language interpreter, if available. If the report cannot be provided in the offender's language and a language interpreter is not available, then the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated sanctioning process.

(3) If the offender indicates to the officer that he does not understand his rights as stated in the probation violation report, the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated sanctioning process.

(4) If the offender chooses to waive his right to a violation hearing and elects to participate in the graduated sanctioning process, then:

(a) The offender shall note his choice and sign the probation violation report;

(b) The officer shall sign the probation violation report;

(c) The district supervisor or designee shall sign the probation violation report;

(d) The officer shall provide the probation violation report to the releasing authority; and

(e) The officer shall document the actions taken in the offender management system.

(5) If an offender contests the sanctions to be imposed or chooses not to waive his right to a violation hearing, the officer shall report the violation to the releasing authority for proceedings.

Section 7. Discretionary Detention Up to Ten Days. (1) If the officer recommends discretionary detention as a graduated sanction, the officer shall review the offender's record to determine if the recommended days of detention will cause the offender to serve more than thirty days in discretionary detention during the calendar year.

(2) The officer shall determine a period of detention, not to exceed ten days.

(3) The officer shall seek approval from the district supervisor for the detention. If the officer takes the offender into custody, the officer shall:

(a) Obtain approval from the District Supervisor within four (4) hours;

(b) If the detention is not approved, follow directives of the District Supervisor;

(c) Continue the detention if other legal process permits; or

(d) Release the offender from detention.

(4) Upon receiving a recommendation for detention:

(a) The district supervisor shall:

1. Approve the recommendation; or

2. Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.

(b) The officer shall document the action in the offender management system.

(5) The officer shall determine if the offender is employed and whether it is feasible for the offender to serve the approved detention at times that the offender is not scheduled to work.

(6) The officer shall document the violation and provide notice to the offender and the releasing authority pursuant to the provisions of Section 6 of this administrative regulation.

Section 8. Compliance Incentives. An officer may use proportionate incentives for compliance with conditions of supervision, including but not limited to:

(1) Reduced reporting requirements,

(2) Lower levels of supervision as indicated by the offender's risk and needs assessment,

(3) Removal of supervision conditions, for example home detention or curfew,

(4) Eligibility for early termination of probation, or

(5) Other similar incentives.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: December 12, 2011

FILED WITH LRC: December 16, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2012 at 9:00 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. 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 attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 29, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker (502) 564-3279

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes a system of graduated sanctions for probationers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 439.3106, 439.3107, 439.3108, 439.470, 439.551, 439.553.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation addresses new legislative requirements and establishes a system of graduated sanctions for non-compliance with probation supervision.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets a system of standard responses for probation officers to violations of probation, but still allows flexibility.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 425 employees and 30,000 offenders, and 120 releasing courts.

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

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

The courts will have to determine the extent of the applicability of the sanctions system because the Department cannot act in conflict with the courts' orders in the supervision of probationers. Probation and parole officers will have to review the offender's case for imposition of sanctions for violations and provide notice to the releasing authority in most cases. Offenders who violate their terms of probation will have to determine whether to agree with the imposition of sanctions or alternatively have the court rule on the violations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Alternative sanctions for non-compliant offenders may include short term incarceration at a local detention facility with an

average cost of \$31.34 per day. The alternative sanction may be imposed in lieu of re-incarceration at a state prison at the average cost of \$60.02 per day.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Offenders will receive alternative sanctions in the community in an effort to avoid re-incarceration for less serious violations. Offenders will have the system of graduated sanctions clearly stated for a better understanding of the consequences of violations and giving offenders the opportunity to comply prior to revocation of supervision being sought.

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

(a) Initially: There is no cost to implement this administrative regulation.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds.

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

There is no anticipated increase in fees or funding to meet the legislative requirements and this 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? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky Department of Corrections and sentencing courts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.3106, 439.3107, 439.3108, 439.470, 439.551, 439.553

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (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? Alternative sanctions may include short term incarceration at the local detention center at an average cost of \$31.34 per day. Local jails receive compensation for the cost of housing state offenders for alternative sentences. Based on an average of 13,788 days per month offenders spent in jail custody on alternative sentences for the first quarter of FY2012, the monthly revenue to state jails is estimated at \$432,115.92.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is estimated that incarceration costs occurring in subsequent years would be the same as incurred in the first year.

(c) How much will it cost to administer this program for the first year? Based on an average of 13,788 days offenders spent in jail per month on alternative sentences for the first quarter of FY2012, the monthly cost to the state is \$432,115.92 (\$5,185,391.04 annually). The alternative sanction may be imposed in lieu of re-incarceration at a state prison at the average cost of \$60.02 per day, for which the estimated monthly cost would be \$827,555.76 (\$9,930,669.12 annually).

(d) How much will it cost to administer this program for subsequent years? It is estimated that expenses occurring in subsequent years would be the same as incurred in 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 (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Home Inspectors (New Administrative Regulation)

815 KAR 6:070. Per diem and reimbursement for traveling and other expenses for board members.

RELATES TO: KRS 45.101, KRS 198B.704(17), KRS 198B.706(15), and KRS 198B.710(1)-(4)

STATUTORY AUTHORITY: KRS 45.101, 198B.704(17), and KRS 12.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.704(17) allows each member of the Board to a minimum salary of \$35.00 per diem and reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as established under KRS 45.101. This administrative regulation sets the per diem amount Board members receive and provides for reimbursement for their actual and necessary traveling and other expenses.

Section 1. Each member of the Board shall receive:

(1) A per diem of \$100.00 for:

(a) Attending each meeting of the Board;

(b) Otherwise engaging in the in-person, face-to-face duties of a member of the Board as approved by the Board, and;

(c) Any additional days of travel incidental to and contemporaneous with attending each meeting of the Board or engaging in the in-person, face-to-face duties of a member of the Board as approved by the Board.

(2) Reimbursement for their actual and necessary expenses.

MARK SCHMIDT, Chair,

APPROVED BY AGENCY: January 11, 2012

FILED WITH LRC: January 13, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2012, at 1:30 p.m., local time, at the Kentucky Board of Home Inspectors, 911 Leewood Drive, Frankfort, Kentucky. 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 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 close of business on February 29, 2012. 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: Tony Crockett, Board Administrator, Office of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tony Crockett

(1) Provide a brief summary of:

(a) What this administrative regulation does: Authorizes Board members to receive a per diem reimbursement of reasonable expenses for each day actually engaged in the duties of the office

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and for actual and necessary expenses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the per diem reimbursement of Board members when only the minimum amount of \$35.00 is set by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.704(17) allows the Board to receive a per diem of a minimum salary of \$35.00 and traveling expenses and other expenses. The Board is promulgating this administrative regulation establishing the per diem reimbursement and traveling and other expenses for Board members.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the per diem reimbursement of Board members actually engaged in the duties of the office and reimbursement of their actual and necessary expenses.

(2) If 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: Nine Board members and one Board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the 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 authorizes the Board members to receive a per diem reimbursement and reasonable expenses for each day actually engaged in the duties of the office.

(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 the Board member. The cost to the Board is set forth below.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The reimbursement of per diem of \$100 for duties of the office and reimbursement of actual and necessary expenses.

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

(a) Initially: \$500.00.

(b) On a continuing basis: \$500.00 for administrative costs to process Board member per diem and expenses for approximately twelve meetings a year and other activities.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board's operation is funded by fees paid by the licensees 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: This administrative regulation is the initial regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation is the initial regulation.

(9) TIERING: Is tiering applied? No, the regulation is equal to all Board members who are actually engaged in the duties of the office.

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Home Inspectors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.704(17) and KRS 12.070.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? \$15,800.00

(d) How much will it cost to administer this program for subsequent years? \$15,800.00

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:

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of January 9, 2012

Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Monday, January 9, 2012, at 1:00 p.m., in Room 149 of the Capitol Annex. Representative Johnny Bell, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the December 2011 meeting were approved.

Present were:

Members: Senators Joe Bowen, David Givens, Alice Forgy Kerr, and Joey Pendleton, and Representatives Johnny Bell, Robert Damron, Danny Ford, and Jimmie Lee.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, Betsy Cupp, and Laura Napier.

Guests: Melissa Bell, Travis Powell, Council on Postsecondary Education; Maryellen Allen, State Board of Elections; Janice Campbell, Karen Greenwell, Amanda McCord, Frances Simpson, Janet Simpson, Hartsel Stovall, Board of Barbering; Nathan Goldman, Board of Nursing; Margaret Everson, Karen Waldrop, Kentucky Fish and Wildlife; Nancy Albright, Ann D'Angelo, Cass Napier, Donald L. Smith, Transportation Cabinet; Pamela Holloway, Virginia Moore, Commission on the Deaf and Hard of Hearing; Stuart Benson, Stuart Owen, Kevin Mudd, Ray Peters, Cabinet for Health and Family Services; Ted Burgin, Kosair Shriners; and David A. James, Louisville Metro Council.

The Administrative Regulation Review Subcommittee met on Monday, January 9, 2012, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

COUNCIL ON POSTSECONDARY EDUCATION: Public Educational Institutions

13 KAR 2:110. Advanced practice doctoral degree programs at comprehensive universities. Melissa Bell, director of student services, and Travis Powell, general counsel, represented the council.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

KENTUCKY STATE BOARD OF ELECTIONS: Statewide Voter Registration

31 KAR 3:020. Designated Disability Services Agencies. Maryellen Allen, interim acting executive director, represented the board.

In response to a question by Co-Chair Bell, Ms. Allen stated that accommodations for disabled persons voting in Kentucky have already been made. The purpose of this administrative regulation was to comply with federal requirements to specifically designate voter registration for disabled persons in an administrative regulation.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 2 to make technical corrections and for clarification. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Barbering: Board

201 KAR 14:180. License fees, examination fees, renewal fees, and expiration fees. Karen Greenwell, administrator; Francis L. Simpson, board member; and Hartsel Stovall, chairman, represented the board.

In response to questions by Representative Lee, Ms. Greenwell stated that, without the fee increases, the board forecast a carryover into 2013 of only \$2,345, which would put the board in the red before the end of Fiscal Year 2012 – 2013. The fee increases would provide approximately \$57,000. All licensees had

been notified, and the board did not receive public comments during the public comment period. The largest financial need the board had was for part-time barber shop inspectors in order to protect public health and safety.

In response to questions by Co-Chair Bowen, Ms. Greenwell stated that the board's financial problem resulted from board funds being swept in addition to rising costs. The board's funds had been swept three (3) times in recent memory. All five (5) board members were in attendance at this Subcommittee meeting to demonstrate the board's solidarity supporting the need for the fee increases.

Board of Nursing: Board

201 KAR 20:085. Licensure periods and miscellaneous requirements. Nathan Goldman, general counsel, represented the board.

In response to a question by Co-Chair Bowen, Mr. Goldman stated that the board made name changes almost instantaneously upon submission of a notice from a nurse licensee.

In response to a question by Senator Givens, Mr. Goldman stated that the board had experienced some situations of license falsification, but this administrative regulation was primarily for name changes pertaining to marital status.

In response to questions by Co-Chair Bell, Mr. Goldman stated that this administrative regulation did not include a penalty for not submitting a name change, and that there was nothing that needed to be added to these requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:260. Organization and administration standards for prelicensure programs of nursing.

A motion was made and seconded to approve the following amendments: to amend 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.

201 KAR 20:340. Students in prelicensure registered nurse and practical nurse programs.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a statutory citation; and (2) to amend Section 1 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:410. Expungement of records.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:082. Transportation and holding of exotic wildlife. Margaret Everson, assistant attorney general, and Karen Waldrop, director, Division of Wildlife, represented the department. Stuart Benson, councilman, District 20, Louisville Metro Council; Ted Burgin, circus chairman, Kosair Shriners; and David A. James, councilman, District 6, Louisville Metro Council, appeared in support of this administrative regulation.

In response to a question by Co-Chair Bell, Subcommittee staff stated that the amended after comments version of this administrative regulation added criteria the commissioner would use to determine if a

permit shall be issued.

In response to questions by Representative Lee, Ms. Waldrop stated that elephant rides were permitted only at circus events. An expert was available to testify regarding safety precautions and the mechanics of an elephant ride.

Mr. Burgin stated that elephant rides took place within a double-caged ring. The rider walked up a ramp to mount the elephant. The elephant made three (3) trips around the ring. He had been providing elephant rides as a Kosair Shriner for approximately thirty-five (35) years. The price for an elephant ride was ten (10) dollars per rider for three (3) trips around the ring.

In response to a question by Representative Lee, Mr. Burgin stated that he had not experienced an accident or dangerous situation involving an elephant ride.

In response to questions by Co-Chair Bowen, Ms. Everson stated that elephant rides had been prohibited for the past few years because this administrative regulation did not make an exception for elephant rides. Ms. Waldrop stated that a Kentucky statute authorized local governments to regulate the holding of wildlife. To receive a permit for elephant rides, a circus was required to be in an area with a local ordinance that allowed elephant rides. Additionally, the circus was required to comply with the safety standards established in this administrative regulation. Mr. Burgin stated there were approximately three (3) cities with a local ordinance to allow elephant rides. Ms. Waldrop stated that Kentucky requirements regarding elephant rides were fairly stringent in comparison with other states, which tended to be more lax.

Representative Damron stated that his membership as an Oleika Shriner did not influence his actions regarding this administrative regulation. He stated that this was not an issue between Oleika and Kosair Shriners, but the issue was public safety.

In response to questions by Representative Damron, Mr. Burgin stated that only Asian elephants were used in elephant rides. African elephants tended to be unpredictable, but Asian elephants were very docile and easily trainable.

Representative Damron stated that elephant rides were stopped in Louisville in 1994 after a person was gored and severely injured. Millions of dollars in damages were awarded. The Louisville Zoo no longer allows elephant rides. There were recently forty-three (43) incidents of persons being killed or injured in relation to elephants. In 2005, there were two (2) separate Shriner Circus elephant-related incidents that resulted in the death of members of the public. The Shriner's mission is to help children. Injuring a child could cause damages to both the Shriner's image and mission. The elephant rides were too financially risky from a liability standpoint to outweigh the revenue from the rides.

In response to a question by Representative Lee, Mr. Burgin stated that parents or riders were not required to sign a waiver or disclaimer prior to participating in an elephant ride.

Mr. James stated that in the incident described by Representative Damron, a contractor for the Louisville Zoo had inadvertently left the elephant's fence gate open. The elephant, which was not an elephant trained to provide rides, escaped through the open gate. An untrained person tried to capture the elephant and was subsequently injured. This administrative regulation had stringent safety requirements, including prohibiting elephant rides from an elephant that had had a safety incident in the past five (5) years. Tranquilizers and firearms were required to be on the premises. The circus was required to have an emergency plan.

Mr. Benson stated that experts in public safety assisted Louisville Metro Council in the drafting of the local ordinance regarding elephant rides.

In response to a question by Representative Damron, Mr. James stated that the Louisville Metro Council's local ordinance regarding elephant rides provided a financial liability requirement of \$500,000. The ordinance limited elephant rides to Asian elephants that were not altered, that were not in heat, and that did not have a calf. Additionally, the Shriner Circus had its own financial liability of \$5,000,000.

In response to questions by Co-Chair Bell, Mr. Burgin stated that a typical elephant weighs approximately eight (8) tons, 16,000 pounds. Ms. Waldrop stated that elephants were tested for tuberculosis, and an elephant that tested positive was quarantined.

Co-Chair Bell stated that wild animals are unpredictable, and

the required financial liability would not be enough if a young professional, for example, was killed or disabled as a result of an elephant ride.

Mr. Benson stated that he was the sponsor of the Louisville Metro Council's local ordinance regarding elephant rides. African elephants were known to be unpredictable, but Asian elephants were very docile and easy to train. The Asian elephant was one of the first species of animals domesticated by man. Statistics show numerous injuries to people by horses, but horseback riding was not prohibited. Elephant rides are valuable events that raise revenue for the Shriner's mission to help children.

Mr. Burgin related a story about one of the largest elephants in the world, Bo. Mr. Burgin told of sharing fruit with Bo, who responded with audible joy. Bo was a gentle, Asian elephant, very different from unpredictable African elephants.

A motion was made and seconded to approve the following amendment: to amend Section 3 to raise the required liability insurance from \$500,000 to \$3,000,000. Without objection, with agreement of the agency, and with a roll-call vote, the amendment was approved by a unanimous vote of the members.

TRANSPORTATION CABINET: Department of Highways: Division of Maintenance: Right-of-Way

603 KAR 4:035. Logo signs; placement along fully controlled and partially controlled access highways. Ann D'Angelo, assistant general counsel, and Cass T. Napier, office project delivery, represented the division.

In response to questions by Co-Chair Bell, Mr. Napier stated that the tier classification system was created because federal requirements for logo signs had become less stringent. Federal requirements reduced standards for logo signs to a facility that served at least two (2) meals per day, even if the hours of operation were limited. Industry requested the tier classification system so that the traveling public would be provided logo options other than just fast food options. Tier one (1) facilities were given priority because they were other than fast food. The requirements were not intended to limit opportunities for facilities to advertise on logo signs, but to give priority to provide a balance of facilities listed on the signs. If a business met the standards in this administrative regulation, that facility would get tier one (1) priority for placement on a logo sign. If the business did not meet the standards, it would be placed in the tier two (2) classification but could still be placed on a logo sign if there was room. The classification system would not affect those facilities already on logo signs. Those facilities would remain on the logo sign unless the business no longer complied with this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 4, 5, 7, 8, and 9 to make CONFORMING AMENDMENTS to correct inconsistencies between the currently effective administrative regulation and the proposed administrative regulation filed by the agency; (2) to amend Section 4 to: (a) establish that tier one (1) businesses shall have priority over tier two (2) businesses if logo signs are full; and (b) clarify that the tier classification system is for urban areas; and (3) to amend Sections 4 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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Commission on the Deaf and Hard of Hearing: Telecommunication Device for the Deaf

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing, and speech impaired. Rowena Holloway, internal policy analyst, and Virginia Moore, executive director, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2 and 4 to conform with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2(2) for clarification. Without objection, and with agreement of the agency, the amendments were approved.

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunica-

tions equipment.

A motion was made and seconded to approve the following amendments: to amend Section 1 to correct inconsistencies between the currently effective administrative regulation and the proposed administrative regulation filed by the agency. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Division of Administration and Financial Management: Medicaid Services

907 KAR 1:018 & E. Reimbursement for drugs. Stuart Owen, regulation coordinator, represented the division.

In response to questions by Representative Lee, Mr. Owen stated that medication reimbursement was approved or denied within twenty-four (24) hours. The patient's care provider provided the prescription, but the pharmacist submitted the reimbursement request. The pharmacist was not liable if medication was dispensed after the reimbursement request was submitted, even if the request was later denied; therefore, the patient should not have to wait for disbursement of medication.

In response to a question by Co-Chair Bowen, Mr. Owen stated that the cabinet exempted certain populations from being included in the managed care part of the system.

In response to questions by Senator Givens, Mr. Owen stated that a separate administrative regulation included scope standards for reimbursement for managed care recipients. This administrative regulation did not include provisions for managed care recipients, but for that population exempt from the managed care part of the system. The cabinet was not authorized to establish pricing reimbursement for the population in the managed care part of the system. Approximately twenty (20) percent of Medicaid recipients were exempt from participation in the managed care part of the system. This administrative regulation was filed on October 3, 2011 as an emergency and an ordinary administrative regulation. The organization previously responsible for establishing the average wholesale price used to calculate reimbursements was found guilty of collusion to elevate the average wholesale price. As a result, the average wholesale price index was no longer available. The cabinet had to find a new price index for calculating reimbursement and switched to using the wholesale acquisition cost, which required a different formula in order to calculate the reimbursement commensurate with the reimbursement established under the average wholesale price index. The change to this administrative regulation was revenue neutral because the reimbursement rate itself did not change, just the algorithm used in calculating the rate now that the average wholesale price index was no longer available. The cabinet was aware of concerns expressed recently by the House and Senate Standing Committees on Health and Welfare.

In response to questions by Co-Chair Bell, Mr. Owen stated that the cabinet's only hesitancy to agree to a request to defer consideration of this administrative regulation to the February 13 meeting of the Subcommittee was that the emergency administrative regulation would expire before the ordinary administrative regulation could become effective, causing the cabinet to return to the old reimbursement rate system, which is based on a price index that is no longer available.

Representative Lee stated that he was unaware of a need to defer consideration of this administrative regulation to the February 13 Subcommittee meeting. Co-Chair Bell retracted the deferral request.

In response to a question by Co-Chair Bowen, Mr. Owen stated that there was a fourteen (14) percent difference between the average wholesale price index and the wholesale acquisition cost; therefore, the reimbursement calculation algorithm needed to be revised so that the rate was commensurate with the old pricing index and revenue neutral. Reimbursements themselves would not change.

In response to a question by Senator Givens, Mr. Owen stated that pharmacists knew how to calculate the formula but did not know the price and did not have to calculate the reimbursements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter

13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the February 13, 2012, meeting of the Subcommittee:

PERSONNEL CABINET: Personnel Cabinet, Classified

101 KAR 2:102. Classified leave administrative regulations.

101 KAR 2:140. Workers' Compensation Fund and Program.

Personnel Cabinet, Unclassified

101 KAR 3:015. Leave administrative regulations for the unclassified service.

GENERAL GOVERNMENT CABINET: Kentucky Boxing and Wrestling Authority: Athletic Commission

201 KAR 27:011. General requirements for boxing and kick-boxing shows.

201 KAR 27:017. Requirements for elimination events.

201 KAR 27:035. Seconds.

201 KAR 27:055. Physicians.

Board of Licensed Professional Counselors: Board

201 KAR 36:060. Qualifying experience under supervision.

201 KAR 36:070. Education and examination requirements.

Department of Agriculture: Office of State Veterinarian: Division of Animal Health: Livestock Sanitation

302 KAR 20:052 & E. Animal Carcass Composting.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Data Reporting and Public Use Data Sets

900 KAR 7:030 & E. Data reporting by health care providers.

Department for Mental Health and Mental Retardation Services: Division of Administration and Financial Management: Institutional Care

908 KAR 3:050. Per diem rates. Kevin Mudd, director, and Ray Peters, program administrator, represented the division.

Co-Chair Bell stated that he was adamantly opposed to this administrative regulation because the cost per patient for institutional care was alarming. Rates increased constantly, but reimbursement for home care had been lowered. Mr. Peters stated that the agency agreed to defer; however, he was under the assumption that today's Subcommittee consideration was limited to typographical errors and technical changes. Subcommittee staff stated that the typographical and technical changes were approved when the suggested amendments were approved, but the Subcommittee's scope of consideration included the initial amendment filed by the agency. The initial amendment included substantive matters, including reimbursement rate adjustments.

In response to questions by Representative Lee, Mr. Peters stated that this administrative regulation was revenue neutral because the cabinet was not changing the base appropriation, but was reorganizing how the base appropriation was allocated. The cabinet's general goal was to reduce the number of patients institutionalized and promote home care as possible and appropriate. The reimbursement rate was usually different from the actual cost and was the amount that was received by the provider. The Oakwood population decrease resulted in a daily rate per-patient increase.

Representative Lee stated that the commissioner needed to address the House and Senate Standing Committees on Appropriations and Revenue in order to explain cost reconciliation at facilities such as Oakwood. Mr. Mudd stated that fixed costs were involved, and the cabinet's goal was transitioning to home care as possible and appropriate.

Co-Chair Bell stated that it should not cost \$500,000 per year per patient for care. He stated that it appeared that an entity was making a lot of money while home care providers were having funding cut. Co-Chair Bell emphasized that this was his opinion

and did not necessarily reflect the opinions of other Subcommittee members.

In response to questions by Senator Givens, Mr. Peters stated that the agency would revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT to correct responses pertaining to third-party payments. He added that most payments were from Medicaid, but a small percentage came from independent insurers.

Subcommittee staff directed the agency to follow up with explanations regarding this administrative regulation that staff would forward to Subcommittee members.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1(1)'s table to make CONFORMING AMENDMENTS to correct the rates being deleted for four (4) facilities to reflect the rates established in the amendments approved at the January 2011 ARRS meeting; and (2) to amend Section 1 to comply with the formatting requirements of KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to request deferral of consideration of this administrative regulation as amended to the February 13 Subcommittee meeting. Without objection, and with agreement of the agency, this administrative regulation as amended was deferred.

The Subcommittee adjourned at 3:30 p.m. until February 13, 2012.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), 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 REVIEW ON EDUCATION
Meeting on December 7, 2011

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of December 12, 2011, having been referred to the Committee on December 7, 2011, pursuant to KRS 13A.290(6):

782 KAR 1:020
782 KAR 1:030
782 KAR 1:040
782 KAR 1:070

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 12, 2011 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE REVIEW ON
HEALTH AND WELFARE
Meeting on December 19, 2011

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of December 19, 2011, having been referred to the Committee on December 7, 2011, pursuant to KRS 13A.290(6):

201 KAR 23:050
201 KAR 23:075
900 KAR 6:075
902 KAR 100:142
908 KAR 1:310

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 19, 2011 meeting, which are hereby incorporated by reference.

HOUSE STANDING COMMITTEE ON HEALTH AND WELFARE
Meeting on January 12, 2012

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Welfare for its meeting of January 12, 2012, having been referred to the Committee on January 4, 2012, pursuant to KRS 13A.290(6):

201 KAR 2:170
921 KAR 3:030

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 12, 2012 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

H - 2

The Locator Index lists all administrative regulations published in VOLUME 38 of the Administrative Register from July 2011 through June 2012. 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 which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 37 are those administrative regulations that were originally published in VOLUME 37 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2011 bound Volumes were published.

KRS Index

H -

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 38 of the Administrative Register.

Technical Amendment Index

H -

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2011 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

Subject Index

H -

The Subject Index is a general index of administrative regulations published in VOLUME 38 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 37 Ky.R. Page No. | Effective Date | Regulation Number | 37 Ky.R. Page No. | Effective Date |
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VOLUME 37

The administrative regulations listed under VOLUME 37 are those administrative regulations that were originally published in Volume 37 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2011 bound Volumes were 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
- **** Emergency expired after 180 days
- (r) Repealer regulation: KRS 13A.310-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.)

| | | |
|-----------------|------|----------------|
| 31 KAR 5:010E | 2128 | 2-1-11 |
| Replaced | 2542 | 6-3-11 |
| 31 KAR 6:030E | 2352 | 3-10-11 |
| Replaced | 2828 | 7-1-11 |
| 32 KAR 1:030E | 1381 | 11-2-10 |
| Replaced | 2828 | 7-1-11 |
| 32 KAR 1:190E | 1382 | 11-2-10 |
| 32 KAR 2:130E | 2130 | 2-7-11 |
| Replaced | 2256 | 6-3-11 |
| 101 KAR 2:095E | 2522 | 3-31-11 |
| Replaced | | (See 38 Ky.R.) |
| 101 KAR 2:102E | 2525 | 3-31-11 |
| Replaced | | (See 38 Ky.R.) |
| 101 KAR 3:015E | 2530 | 3-31-11 |
| Replaced | | (See 38 Ky.R.) |
| 103 KAR 15:195E | 2535 | 4-1-11 |
| Replaced | | (See 38 Ky.R.) |
| 201 KAR 8:008E | 2807 | 4-21-11 |
| Expired | | 10-18-11 |
| 201 KAR 8:532E | 2808 | 4-21-11 |
| Replaced | | (See 38 Ky.R.) |
| 201 KAR 8:550E | 2143 | 2-2-11 |
| Replaced | 2876 | 8-5-11 |
| 201 KAR 8:562E | 2812 | 4-21-11 |
| Replaced | | (See 38 Ky.R.) |
| 201 KAR 43:010E | 2817 | 4-29-11 |
| Replaced | | (See 38 Ky.R.) |
| 201 KAR 43:020E | 2818 | 4-29-11 |
| Replaced | 3032 | 12-2-11 |
| 201 KAR 43:030E | 2820 | 4-29-11 |
| Replaced | 3034 | 12-2-11 |
| 201 KAR 43:040E | 2821 | 4-29-11 |
| Replaced | 3035 | 12-2-11 |
| 401 KAR 51:052E | 2352 | 3-14-11 |
| Replaced | | 8-4-11 |
| 815 KAR 10:070E | 2824 | 5-10-11 |
| Replaced | | (See 38 Ky.R.) |
| 900 KAR 5:020E | 3005 | 5-6-11 |
| Replaced | | 10-19-11 |
| 922 KAR 1:420E | 1960 | 1-3-11 |
| Expired | **** | 7-2-11 |

ORDINARY ADMINISTRATIVE REGULATIONS:

| | |
|--------------|------|
| 13 KAR 2:060 | |
| Amended | 2250 |
| As Amended | 2539 |
| 16 KAR 3:050 | |
| Amended | 1500 |
| As Amended | 1963 |

| | |
|------------------|----------------|
| 16 KAR 6:030 | |
| Amended | 2665 |
| 31 KAR 5:010 | |
| Amended | 2254 |
| As Amended | 2542 |
| | 6-3-11 |
| 31 KAR 6:030 | |
| Amended | 2443 |
| As Amended | 2828 |
| | 7-1-11 |
| 32 KAR 1:030 | |
| Amended | 1502 |
| 32 KAR 1:190 | |
| Amended | 1504 |
| 32 KAR 2:130 | |
| Amended | 2256 |
| 101 KAR 1:325 | |
| Amended | 2666 |
| | 7-21-11 |
| 101 KAR 2:095 | |
| Amended | 2669 |
| | (See 38 Ky.R.) |
| 101 KAR 2:102 | |
| Amended | 2672 |
| | (See 38 Ky.R.) |
| 101 KAR 3:015 | |
| Amended | 2677 |
| | (See 38 Ky.R.) |
| 102 KAR 1:178 | 2303 |
| 103 KAR 3:010 | |
| Amended | 2258 |
| As Amended | 2543 |
| 103 KAR 3:030 | |
| Amended | 2263 |
| As Amended | 2547 |
| 103 KAR 3:040 | |
| Amended | 2273 |
| As Amended | 2556 |
| 103 KAR 3:050 | |
| Amended | 760 |
| 103 KAR 15:195 | 2769 |
| | (See 38 Ky.R.) |
| 201 KAR 3:045 | |
| Amended | 2891 |
| 201 KAR 3:081(r) | 3020 |
| 201 KAR 3:090 | 3021 |
| 201 KAR 8:532 | 3022 |
| | (See 38 Ky.R.) |
| 201 KAR 8:550 | 2308 |
| | 9-13-11 |
| Amended | 2876 |
| | 8-5-11 |
| 201 KAR 8:560 | 626 |
| 201 KAR 8:562 | 3027 |
| | (See 38 Ky.R.) |
| 201 KAR 12:083 | |
| Amended | 2282 |
| As Amended | 2829 |
| | 7-1-11 |
| 201 KAR 20:056 | |
| Amended | 2892 |
| | (See 38 Ky.R.) |
| 201 KAR 20:059 | |
| Amended | 2046 |
| 201 KAR 20:062 | |
| Amended | 2895 |
| | 8-17-11 |
| 201 KAR 20:070 | |
| Amended | 2900 |
| | 8-17-11 |
| 201 KAR 20:110 | |
| Amended | 2902 |
| | 8-17-11 |
| 201 KAR 20:215 | |
| Amended | 2905 |
| | 8-17-11 |
| 201 KAR 20:225 | |
| Amended | 2907 |
| | 8-17-11 |
| 201 KAR 20:240 | |
| Amended | 2909 |
| | 8-17-11 |
| 201 KAR 20:310 | |
| Amended | 2911 |
| | 8-17-11 |
| 201 KAR 20:411 | |

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 37 Ky.R. Page No. | Effective Date | Regulation Number | 37 Ky.R. Page No. | Effective Date |
|----------------------|----------------------|-------------------|----------------------|----------------------|-------------------|
| Amended | 2913 | 8-17-11 | Withdrawn | | 9-15-11 |
| 201 KAR 20:470 | | (See 38 Ky.R.) | 201 KAR 39:120 | | |
| Amended | 2915 | 8-17-11 | Amended | 2466 | |
| 201 KAR 26:115 | | | Withdrawn | 9-15-11 | |
| Amended | 1511 | | 201 KAR 41:100 | 1112 | |
| As Amended | 1976 | | As Amended | 1987 | |
| 201 KAR 26:121 | | | 201 KAR 42:010 | | |
| Amended | 1513 | | Amended | 1009 | |
| 201 KAR 26:125 | | | Amended | 1695 | |
| Amended | 1514 | | As Amended | 1988 | |
| As Amended | 1977 | | 201 KAR 42:020 | | |
| 201 KAR 26:130 | | | Amended | 1011 | |
| Amended | 1516 | | Amended | 1696 | |
| As Amended | 1977 | | As Amended | 1989 | |
| 201 KAR 26:155 | | | 201 KAR 42:030 | | |
| Amended | 1518 | | Amended | 1012 | |
| As Amended | 1978 | | As Amended | 1989 | |
| 201 KAR 26:171 | | | 201 KAR 42:035 | | |
| Amended | 1520 | | Amended | 1013 | |
| As Amended | 1979 | | Amended | 1697 | |
| 201 KAR 26:175 | | | As Amended | 1990 | |
| Amended | 1523 | | 201 KAR 42:040 | | |
| 201 KAR 26:180 | | | Amended | 1015 | |
| Amended | 1526 | | Amended | 1699 | |
| 201 KAR 26:185 | | | As Amended | 1991 | |
| Amended | 1527 | | 201 KAR 42:050 | | |
| As Amended | 1982 | | Amended | 1016 | |
| 201 KAR 26:190 | | | Amended | 1700 | |
| Amended | 1529 | | As Amended | 1992 | |
| As Amended | 1983 | | 201 KAR 42:060 | | |
| 201 KAR 26:200 | | | Amended | 1018 | |
| Amended | 1532 | | Amended | 1702 | |
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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

(r) Repealer regulation: KRS 13A.310-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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EMERGENCY ADMINISTRATIVE REGULATIONS:

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