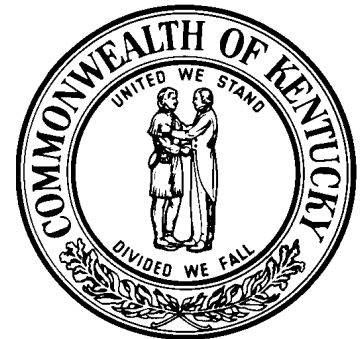


# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 39, NUMBER 4  
MONDAY, OCTOBER 1, 2012

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, September 14, 2012.

<b>ARRS – October 9, 2012 TENTATIVE AGENDA .....</b>	<b>725</b>
<b>REGULATION REVIEW PROCEDURE .....</b>	<b>728</b>

#### **EMERGENCIES**

Personnel Cabinet .....	729
Department of Revenue .....	730
Department of Fish and Wildlife Resources .....	733
Office of Health Policy .....	736
Department for Medicaid Services .....	739

#### **AS AMENDED**

Kentucky Retirement Systems .....	750
Kentucky Board of Emergency Medical Services .....	754
Kentucky Economic Development Finance Authority .....	767
Department of Corrections .....	768
Department of Housing, Buildings and Construction .....	769
Governor's Office of Electronic Health Information .....	770
Office of Inspector General .....	771
Department for Income Support .....	772

#### **AMENDED AFTER COMMENTS**

Office of the Attorney General .....	780
Division for Air Quality .....	783
Office of Health Policy .....	805

#### **PROPOSED AMENDMENTS**

Personnel Cabinet .....	813
Finance and Administration Cabinet .....	814
Board of Speech-Language Pathology and Audiology .....	823
Board of Physical Therapy .....	826
Department of Fish and Wildlife Resources .....	830
Department for Natural Resources .....	844
Office of Health Policy .....	856
Department for Medicaid Services .....	863
Department for Mental Health and Mental Retardation Services .....	873
Department for Aging and Independent Living .....	875

#### **NEW ADMINISTRATIVE REGULATIONS**

Department of Revenue .....	916
Board of Speech-Language Pathology and Audiology .....	918
Board of Licensed Diabetes Educators .....	920
Department for Natural Resources .....	926
Department of Housing, Buildings and Construction .....	927

<b>ARRS Report .....</b>	<b>931</b>
<b>OTHER COMMITTEE REPORTS .....</b>	<b>934</b>

#### **CUMULATIVE SUPPLEMENT**

Locator Index - Effective Dates .....	D - 2
KRS Index .....	D - 8
Technical Amendments .....	D -14
Subject Index .....	D -15

#### **MEETING NOTICE: ARRS**

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet October 9, 2012 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **725-728** of this Administrative Register.

#### **EARRS MEETING NOTICE**

The Education Assessment and Accountability Review Subcommittee is tentatively scheduled to meet at 1:00 p.m., Monday, October 29, 2012 in room 131, Capitol Annex, Frankfort, Kentucky.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2012 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

#### **ADMINISTRATIVE REGISTER OF KENTUCKY**

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**VOLUME 39, NUMBER 4 – OCTOBER 1, 2012**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, OCTOBER 9, 2012, at 1:00 p.m., Room 149 Capitol Annex**

**EDUCATION PROFESSIONAL STANDARDS BOARD**

**Administrative certificates**

16 KAR 3:010. Certification for school superintendent.

**Assessment**

16 KAR 6:030. Examination prerequisites for principal certification.

**OFFICE OF THE ATTORNEY GENERAL  
Office of Consumer Protection**

**Division of Consumer Protection**

40 KAR 2:330. Mold remediation. (Amended After Comments)

**GENERAL GOVERNMENT CABINET  
Board of Pharmacy**

**Board**

201 KAR 2:020 & E. Examination. ("E" expires 1/16/2013)

201 KAR 2:030 & E. License transfer. ("E" expires 1/16/2013)

201 KAR 2:050 & E. Licenses and permits; fees. ("E" expires 1/16/2013)

201 KAR 2:061 & E. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints. ("E" expires 1/16/2013)

201 KAR 2:205 & E. Pharmacist-in-charge. ("E" expires 1/16/2013)

201 KAR 2:350 & E. Home medical equipment service providers. ("E" expires 1/16/2013)

**Board of Optometric Examiners**

**Board**

201 KAR 5:010 & E. Application for licensure; endorsement. ("E" expires 1/16/2013)

201 KAR 5:030 & E. Annual courses of study required. ("E" expires 1/16/2013)

201 KAR 5:130 & E. Controlled substances. ("E" expires 1/16/2013)

**Board of Dentistry**

**Board**

201 KAR 8:520. Fees and fines.

201 KAR 8:532 & E. Licensure of dentists. ("E" expires 1/16/2013)

201 KAR 8:540 & E. Dental practices and prescription writing. ("E" expires 1/21/2013)

**Board of Medical Licensure**

**Board**

201 KAR 9:001 & E. Definitions for terms used in KRS 218A.172. ("E" expires 1/16/2013)

201 KAR 9:081 & E. Disciplinary proceedings. ("E" expires 1/16/2013)

201 KAR 9:200 & E. National Practitioner Data Bank reports. ("E" expires 1/16/2013)

201 KAR 9:210 & E. Criminal background checks required for all new applicants. ("E" expires 1/16/2013)

201 KAR 9:220 & E. Restriction upon dispensing of Schedule II controlled substances and Schedule III controlled substances containing Hydrocodone. ("E" expires 1/16/2013)

201 KAR 9:230 & E. Required registration in the KASPER system; legal requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement. ("E" expires 1/16/2013)

201 KAR 9:240 & E. Emergency orders and hearings; appeals and other proceedings. ("E" expires 1/16/2013)

201 KAR 9:250 & E. Registration and oversight of pain management facilities. ("E" expires 1/16/2013)

201 KAR 9:260 & E. Professional standards for prescribing and dispensing controlled substances. ("E" expires 1/16/2013)

201 KAR 9:310 & E. Continuing medical education. ("E" expires 1/16/2013)

**Kentucky State Board of Licensure for Professional Engineers and Land Surveyors**

**Board**

201 KAR 18:040. Fees.

201 KAR 18:192. Continuing professional development for professional land surveyors.

**Board of Nursing**

**Board**

201 KAR 20:056 & E. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization. ("E" expires 1/16/2013)

201 KAR 20:057 & E. Scope and standards of practice of advanced practice registered nurses. ("E" expires 1/16/2013)

201 KAR 20:161 & E. Investigation and disposition of complaints. ("E" expires 1/16/2013)

201 KAR 20:215 & E. Continuing competency requirements. ("E" expires 1/16/2013)

**Board of Podiatry**

**Board**

201 KAR 25:011 & E. Approved schools; examination application; fees. ("E" expires 1/16/2013)

201 KAR 25:021 & E. Annual renewal of licenses, fees. ("E" expires 1/16/2013)

201 KAR 25:031 & E. Continuing education. ("E" expires 1/16/2013)

201 KAR 25:051 & E. Procedure for complaints and hearings involving licensees: temporary suspension. ("E" expires 1/16/2013)

201 KAR 25:090 & E. Prescribing and dispensing controlled substances. ("E" expires 1/16/2013)

**VOLUME 39, NUMBER 4 – OCTOBER 1, 2012**

**Kentucky Board of Prosthetics, Orthotics, and Pedorthics**

**Board**

- 201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013. (Not Amended After Comments)
- 201 KAR 44:100. Inactive status. (Not Amended After Comments)
- 201 KAR 44:110. Licensure by endorsement. (Not Amended After Comments)
- 201 KAR 44:120. Post residency registration. (Not Amended After Comments)

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

**Game**

- 301 KAR 2:030. Commercial guide license.

**Hunting and Fishing**

- 301 KAR 3:012. Public use of Otter Creek Outdoor Recreation Area.

**GENERAL GOVERNMENT CABINET  
Department of Agriculture  
Office of Consumer and Environmental Protection  
Division of Environmental Services**

**Structural Pest Control**

- 302 KAR 29:020. General provisions.
- 302 KAR 29:060. Certification.

**ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Water**

**Water Quality Standards**

- 401 KAR 10:001. Definitions for 401 KAR Chapter 10.
- 401 KAR 10:026. Designation of uses of surface waters.
- 401 KAR 10:030. Antidegradation policy implementation methodology.
- 401 KAR 10:031. Surface water standards.

**Division for Air Quality**

**Attainment and Maintenance of the National Ambient Air Quality Standards**

- 401 KAR 51:001. Definitions for 401 KAR Chapter 51. (Amended After Comments)
- 401 KAR 51:017. Prevention of significant deterioration of air quality. (Amended After Comments)
- 401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas. (Not Amended After Comments)

**EDUCATION CABINET AND WORKFORCE DEVELOPMENT CABINET  
Board of Education  
Department of Education**

**Office of Instruction**

- 704 KAR 3:305. Minimum requirements for high school graduation.

**Office of Learning Support Services**

- 704 KAR 7:160. Use of restraint and seclusion in public schools.

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Agent Licensing Division**

**Agents, Consultants, Solicitors and Adjusters**

- 806 KAR 9:211. Repeal of 806 KAR 9:210.

**Property and Casualty Division**

**Surplus Lines**

- 806 KAR 10:060. Cancellation of financial responsibility.

**Division of Kentucky Access**

**Health Insurance Contracts**

- 806 KAR 17:540. ICARE Program high-cost conditions.
- 806 KAR 17:545. ICARE Program employer eligibility, application process, and requirements.
- 806 KAR 17:555. ICARE Program requirements.

**ENERGY AND ENVIRONMENT CABINET  
Public Service Commission**

**Utilities**

- 807 KAR 5:076. Alternative rate adjustment procedure for small utilities. (Deferred from September)

**PUBLIC PROTECTION CABINET  
Department of Housing, Buildings and Construction  
Division of Building Codes Enforcement**

**Elevator Safety**

- 815 KAR 4:030. Elevator contractor licensing requirements.
- 815 KAR 4:040. Elevator mechanic licensing requirements.
- 815 KAR 4:060. Requirements for approval of continuing education courses and providers

**VOLUME 39, NUMBER 4 – OCTOBER 1, 2012**

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

**Certificate of Need**

900 KAR 6:060. Timetable for submission of certificate of need applications. (Amended After Comments)

**Certificate of Need**

900 KAR 6:085. Implementation of outstanding Certificate of Need when ownership has changed. (Amended After Comments)

900 KAR 6:090. Certificate of Need filing, hearing, and show cause hearing. (Amended After Comments)

900 KAR 6:130. Certificate of Need criteria for physician exemption. (Amended After Comments)

**Office of Inspector General  
Division of Health Care**

**Health Services and Facilities.**

902 KAR 20:420 & E. Pain management facilities. ("E" expires 1/16/2013)

**Division of Audits and Investigations**

**Controlled Substances**

902 KAR 55:110 & E. Monitoring system for prescription controlled substances. ("E" expires 1/16/2013)

**Department for Medicaid Services  
Division of Community Alternatives**

**Medicaid Services**

907 KAR 1:145. Supports for community living services for an individual with an intellectual or developmental disability.

907 KAR 1:155. Payments for supports for community living services for an individual with an intellectual or developmental disability.

**Supports for Community Living Waiver**

907 KAR 12:010. New supports for community living waiver service and coverage policies.

907 KAR 12:020. Reimbursement for new supports for community living waiver services.

**Department for Aging and Independent Living  
Division of Operations Support**

**Aging Services**

910 KAR 1:240. Certification of assisted-living communities.

**REMOVED FROM OCTOBER 2012 AGENDA**

**ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Water**

**Water Quality**

401 KAR 5:055. Scope and applicability of the KPDES Program. (Comments Received; SOC ext.)

401 KAR 5:060. KPDES application requirements. (Comments Received; SOC ext.)

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections**

**Capitol Punishment**

501 KAR 16:290. Preliminary and post-execution procedures concerning condemned person. (Comments Received)

501 KAR 16:310. Pre-execution medical actions. (Comments Received)

501 KAR 16:330. Lethal injection protocols. (Comments Received)

**ENERGY AND ENVIRONMENT CABINET  
Public Service Commission**

**Utilities**

807 KAR 5:001. Rules of procedure. (Comments Received)

807 KAR 5:006. General rules. (Comments Received)

807 KAR 5:011. Tariffs. (Comments Received)

**CABINET FOR HEALTH AND FAMILY SERVICES  
Commissioner's Office**

**Health Care-Acquired Conditions and Provider Preventable Conditions**

907 KAR 14:005 & E. Health care-acquired conditions and other provider preventable conditions. ("E" expires 1/19/2013) (Comments Received, SOC ext.)

**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

STATEMENT OF EMERGENCY  
101 KAR 2:210E

This emergency administrative regulation incorporates by reference the 2013 plan year handbook for the Public Employee Health Insurance Program. The Public Employee Health Insurance Program is commonly known as the Kentucky Employees' Health Plan. KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the 2013 plan year handbook on or before September 15, 2012. This emergency administrative regulation is necessary to meet a deadline for the promulgation of an administrative regulation that is established by state law. KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the 2013 plan year handbook containing the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. This administrative regulation incorporates by reference the benefits selection guide distributed by the Department of Employee Insurance in the Personnel Cabinet to public employees covered under the self-insured plan. The Benefits Selection Guide contains the employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. This emergency administrative regulation will be replaced by an ordinary administrative regulation. This emergency administrative regulation is not identical to the ordinary administrative regulation filed at the same time as this emergency administrative regulation. Because this emergency administrative regulation will be in effect for part of plan year 2012, the existing language regarding the Benefits Selection Guide for the 2012 plan year is needed until the ordinary administrative regulation replaces this emergency administrative regulation.

STEVEN BESHEAR, Governor  
TIM LONGMEYER, Secretary

PERSONNEL CABINET  
Office of the Secretary  
(Emergency Amendment)

**101 KAR 2:210E. 2012 and 2013 Plan Year Handbooks [Handbook] for the Public Employee Health Insurance Program.**

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

EFFECTIVE: September 14, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2012 and 2013 Plan Years[Year] as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2012 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. (1) The Department of Employee Insurance shall

distribute or make available to the public employees covered under the self-insured plan the 2013 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

(2) The 2013 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide shall govern the health plan benefits for public employees covered under the self-insured plan beginning January 1, 2013.

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

(a) "2012 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2012 edition; and

(b) "2013 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2013 edition[is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: August 31, 2012

FILED WITH LRC: September 14, 2012 at 9 a.m.

CONTACT PERSON: Joe R. Cowles, Deputy Executive Director, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-7603.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Joe R. Cowles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference, the 2013 plan year Benefits Selection Guide for health benefit plans offered through the Public Employee Health Insurance Program. The Benefits Selection Guide is distributed to all health plan participant plan holders. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the 2013 self-insured plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254 requires the Personnel Cabinet to incorporate by reference the 2013 plan year Benefits Selection Guide distributed to the public employees covered by the Public Employee Health Insurance Program in an administrative regulation. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the statute authorizing the self-insured health benefit plan and the statute mandating the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2013 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(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 an amendment. This administrative regulation constitutes a compilation of the health contributions, benefit options, eligibility rules, and exclusions for participants of the Public Employee Health Insurance Program for the plan year 2013. The

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

2013 Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect the health benefit under the Public Employee Health Insurance Program for the plan year 2013 and to comply with the statutory mandate to annually update the regulations incorporating the plan year handbook contained in KRS 18A.2254.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2013 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2013 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: State and select county and local government entities, including employees of the local school boards and districts, and retirees will be affected. More specifically, this encompasses approximately 158,106 eligible employees under KRS 18A.225(1)(a) and a total of 271,819 (which would include qualifying beneficiaries and dependents).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by entities to comply with the incorporation of these provisions in an administrative regulation. The 2013 plan year Benefits Selection Guide will provide notice to the public employees covered under the Public Employee Health Insurance Program concerning the health benefit plans offered for the 2013 plan year; specifically, the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2013 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Complying with this administrative regulation will have a cost impact to participants or beneficiaries covered under the Public Employee Health Insurance Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants and dependents covered under the Public Employee Health Insurance Program for plan year 2013 will have comparable benefit structure to the 2012 plan year. There were necessary employee premium contribution and health benefit modifications for plan year 2013 as a result of projected health care inflation, two percent budgeted employer contribution increase for plan year 2013 and state and federal health care mandates effective January 1, 2013.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust 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: This is an amendment. This administrative regulation will not require an in-

crease in funding or fees.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all participants in the Public Employee Health Insurance Program which includes state government, retirees, select local government entities and employees of local school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287, and 26 U.S.C. 105, 106, 125, 152, 129 and 152 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1-7; H.R. 3590, the Patient Protection and Affordable Care Act, Reconciliation Act of 2010, Pub. L. No. 111-152 (HCERA).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, school boards 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, school boards or school districts) for the first year? The administrative regulation will not generate any revenues.

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

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law an amended administrative regulation will be promulgated in 2013 and each subsequent plan 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

103 KAR 5:220E

This emergency administrative regulation is being promulgated in order to provide third party purchasers of certificates of delinquency with the guidance necessary to comply with the recent enactment of HB 545 during the 2012 regular session of the Kentucky General Assembly in which KRS 134.490 was amended to require third party purchasers of certificates of delinquency to offer installment payment plans upon written request of the delinquent taxpayer for all certificates of delinquency purchased after June 1, 2012. This regulation will provide that all installment payment plans made available by third party purchasers are consistent and equitable in the terms offered to delinquent taxpayers. This emergency administrative regulation shall be replaced by an ordinary administrative regulation being filed with the Administrative Regulations Compiler contemporaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.



STEVEN L. BESHEAR, Governor  
THOMAS B. MILLER, Commissioner

**FINANCE AND ADMINISTRATION CABINET**  
**Department of Revenue**  
**Office of Property Valuation**  
**(New Emergency Administrative Regulation)**

**103 KAR 5:220E. Installment payment plan guidelines for third party purchasers of certificates of delinquency.**

RELATES TO: KRS 134.490 (5) (h)

STATUTORY AUTHORITY: KRS 134.490 (5) (h)

EFFECTIVE: September 4, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.490 authorizes the Department of Revenue to promulgate administrative regulations to establish a process for an installment method of payment for the redemption of certificates of delinquency by a delinquent taxpayer. In compliance with this subsection, this new administrative regulation establishes a process by which third party purchasers shall grant installment payments and establishes the fee associated with this service.

Section 1. Definitions. (1) "Base amount" means the amount paid by a third-party purchaser for a certificate of delinquency.

(2) "Certificate of delinquency" has the same meaning as in KRS 134.010.

(3) "Default" means:

(a) The failure to pay on or within fifteen (15) days of a payment due date under a payment plan document; or

(b) Commencement of any legal action by a person other than the third-party purchaser affecting the title or requiring the sale of the subject property.

(4) "Department" means the Department of Revenue.

(5) "Optional certificate" means a certificate of delinquency that is not a qualifying certificate.

(6) "Payment plan" means a monthly installment plan described in the payment plan document.

(7) "Payment plan document" means the agreement between the property owner and the third-party purchaser detailing the terms of a payment plan.

(8) "Person" means any individual, corporation, business trust, estate, trust, partnership, limited liability entity, association, organization, joint venture, government, or any subdivision, agency or instrumentality thereof, or any other legal or commercial entity.

(9) "Processing fee" means a fee that may be imposed by a third-party purchaser for administering a payment plan. The processing fee shall not exceed eight (8) dollars per month during the term of the payment plan.

(10) "Property owner" means the "taxpayer" as defined in KRS 134.010, or any other owners of real property on which an outstanding certificate of delinquency is held by a third-party purchaser.

(11) "Qualifying certificate" means a certificate of delinquency purchased after June 1, 2012 by a third-party purchaser required to register with the department under KRS 134.129.

(12) "Subject property" means the property against which the lien related to a certificate of delinquency is attached.

(13) "Third-party purchaser" means a "third-party purchaser" as defined KRS 134.010. Third-party purchaser as used in this regulation also includes any assignee of a certificate of delinquency.

Section 2. Notice of Payment Plan Availability. (1) Any third-party purchaser who owns a qualifying certificate shall provide notice of the availability of a payment plan to the property owner as required by KRS 134.490(3)(d)5, unless the conditions established by Section 7 of this administrative regulation apply. The notice shall include, at a minimum, the following information:

(1) A statement that a payment plan is available upon written request from the property owner;

(2) The mailing address and the physical address where a request may be delivered. An electronic address may also be provided at the option of the third-party purchaser to accept requests in an electronic format;

(3) The date the certificate of delinquency was purchased by the third-party purchaser as provided in KRS 134.128, or paid and assigned as provided in KRS 134.126(8); and

(4) A statement that the option to request a payment plan shall expire unless a written request for a payment plan is received by the third-party purchaser within twelve (12) months of the date the certificate of delinquency was purchased by the third-party purchaser.

Section 3. Submission and Review of Payment Plan Requests.

(1) Any property owner with property subject to a qualifying certificate may submit a written request for a payment plan to the third-party purchaser holding the qualifying certificate within twelve (12) months of the date the certificate of delinquency was purchased by the third-party purchaser as provided in KRS 134.128; or paid and assigned as provided in KRS 134.126(8). The request shall be made in accordance with the process established by the third-party purchaser.

(2) Upon receipt of a payment plan request, the third-party purchaser shall review the request, and if the request is timely and none of the conditions listed under Section 7 of this administrative regulation apply, the third-party purchaser shall prepare and deliver payment plan documents to the property owner in accordance with the provisions of this administrative regulation.

(3) Beginning with receipt of a request for a payment plan, and during the term of any payment plan, the third-party purchaser shall not assign the certificate of delinquency or undertake any enforcement remedies available under the law for the collection of the amount due on a certificate of delinquency. If the request for a payment plan is rejected because it is not timely or one of the conditions listed in Section 7 of this administrative regulation applies, or if the property owner defaults, the third-party purchaser may pursue any legal remedies available to the third-party purchaser under the law for collection of the amount due.

(4) A third-party purchaser may accept a request for a payment plan that is not timely filed. A payment plan entered into under this subsection shall be governed by the provisions of this administrative regulation.

Section 4. Payment Plan Requirements and Terms. (1) The payment plan shall provide for equal monthly installments, except the amount due in the final month may be adjusted to reconcile the total amount paid with the total amount due. The payment plan shall be offered for a minimum of twelve (12) months, unless the property owner requests a shorter term.

(2) The terms and conditions of the payment plan shall be established by a payment plan document, which shall be signed by the property owner and the third-party purchaser. The third-party purchaser shall provide a copy of the executed document to the property owner. The payment plan document shall be effective upon receipt by the third-party purchaser.

(3) The payment plan document shall include the following:

(a) A description of the subject property and the tax bill covered by the certificate of delinquency;

(b) The base amount due at the time the payment plan document is executed;

(c) The total amount of pre-litigation attorney fees and administrative fees incurred and accrued as provided in KRS 134.452 and due at the time the payment plan document is executed;

(d) The amount of interest accrued at the time the payment plan document is executed, calculated as provided in KRS 134.452 and 134.125;

(e) The term of the payment plan and number of monthly payments;

(f) The amount of interest that will accrue over the term of the payment plan, assuming payments are made according to the payment plan schedule;

(g) The amount of the monthly processing fee imposed;

(h) The monthly payment amount due, as determined as provided in Section 5 of this administrative regulation;

(i) The date the monthly payment amount is due;

(j) A statement that the payment plan will be considered in default and may be terminated if payment is not received within fifteen (15) business days of the due date;

- (k) Acceptable methods of payment;
  - (l) The mailing address and delivery address where payments are to be made, if the payments are to be mailed; and
  - (m) Any other terms and conditions mutually agreed upon by the property owner and third-party purchaser.
- (3) The third-party purchaser may limit the method of payment accepted to those methods reasonably determined to ensure payment, provided that a third-party purchaser shall accept certified checks, cashier's checks and cash in payment. A third-party purchaser may at the discretion of the third-party purchaser, also accept ACH transfers, wire transfers, credit card, personal check, or other means of payment.
- (4) The third-party purchaser shall not require more than one (1) payment per month.

Section 5. Calculation of the Monthly Amount Due and Crediting of Payments. (1) Interest shall be calculated during the term of the payment plan on the outstanding balance of the base amount as required by KRS 134.125.

(2) To determine the monthly payment due, the third-party purchaser shall include the following to establish the total amount due, and shall then calculate a monthly payment, with any adjustment necessary for payments to equal the total amount due made in the last month of the payment plan:

- (a) The base amount due;
  - (b) Interest:
    - 1. Accrued prior to the effective date of the payment plan; and
    - 2. Calculated on the declining balance of the base amount over the term of the payment plan as provided in subsection (1) of this section.
  - (c) Pre-litigation attorney fees and administrative fees imposed under KRS 134.452 accrued at the time the payment plan is agreed to; and
  - (d) The monthly processing fee amount multiplied by the number of months the payment plan will be in effect.
- (3) Payments shall be credited by the third-party purchaser on the day the payment is received.
- (4) Payment amounts received shall be credited as follows:
- (a) First, to the monthly processing fee, which shall become due on the first day of each calendar month;
  - (b) Second, to the interest due;
  - (c) Third, to outstanding pre-litigation attorney fees and administrative fees imposed under KRS 134.452 and included as part of the payment plan document; and
  - (d) Fourth, to reduce the base amount due.
- (5) If multiple certificates of delinquency are included under one payment plan document, the third-party purchaser shall apply payments based on the earliest date of attachment of the lien to the subject property.

Section 6. Default. (1) Upon default by a property owner under a payment plan document, the payment plan shall be terminated and the third-party purchaser shall provide written notice of the default and termination to the property owner within fifteen (15) business days.

(2) The third-party purchaser may charge a processing fee for the month in which the default occurs, but shall not charge a processing fee for any subsequent month.

(3) In determining the outstanding amount due after a default, all payments received from the property owner and already credited as provided in Section 5 of this administrative regulation shall remain as credited under Section 5 of this administrative regulation. Any additional payments received after a default shall be applied as follows:

- (a) First, to the payment of unpaid processing fees of the period prior to default, including the processing fee due in the month the default occurred;
- (b) Second, to outstanding interest due;
- (c) Third, to outstanding pre-litigation attorney fees and administrative fees imposed, as permitted under KRS 134.452 and included as part of the payment plan document; and
- (d) Fourth, to reduce the base amount due.

Section 7. Conditions Under Which A Payment Plan Is Not

Required. A third-party purchaser shall not be required to offer a payment plan to a property owner under the following circumstances:

- (1) The property owner has previously defaulted on a payment plan with that third-party purchaser; or
- (2) An agreed judgment, agreed order, or other court order is in place that addresses the payment of the underlying tax claim or claims covered by a certificate of delinquency.

Section 8. Optional Payment Plans. (1) A third-party purchaser who is not required to register with the department under KRS 134.129, or who holds optional certificates of delinquency may offer payment plans to property owners under the same terms, conditions, and requirements established by this administrative regulation.

(2) Any payment plan agreement between a third-party purchaser and a property owner in existence on the effective date of this administrative regulation shall remain in effect according to the terms of the existing agreement. The third-party purchaser shall not impose the processing fee authorized by this administrative regulation.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: August 31, 2012

FILED WITH LRC: September 4, 2012 at 3 p.m.

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Devon Hankins

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This regulation provides details about how a third party purchaser of certificates of delinquency will notify a delinquent taxpayer about the availability of an installment payment plan. It provides guidance on the terms and conditions of the installment payment plan and it specifies how payments are to be applied by the third party purchasers.
  - (b) The necessity of this administrative regulation: This regulation is needed to help ensure all third party purchasers of certificates of delinquency are consistent and equitable in the terms offered as part of the installment payment plans offered to delinquent taxpayers.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 134.490(5) requires third party purchasers to offer an installment payment plan upon written request of a delinquent taxpayer. This regulation provides more details to the general requirements authorized by the statute.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will help ensure that all payment plans offered by third party purchasers are fair and equitable to each delinquent taxpayer.
- (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: Third party purchasers of certificates of delinquency will be affected. For the 2012 calendar year, there are 115 third party purchasers registered with the Department of Revenue.
- (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 third party purchasers will have to develop an installment payment plan agreement and they will likely need some reprogramming of existing collection software or a new software program that can accurately track the payments made by the taxpayer and calculate new balances as payments are made.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not known what costs will have to be incurred by the third party purchasers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More certificates of delinquency will be paid without having to resort to costly foreclosure proceedings.

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

(a) Initially: Minimal costs will be incurred by the Department of Revenue.

(b) On a continuing basis: Minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The minimal costs incurred can be absorbed in current budget appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No new fees will be administered by the Department of Revenue to implement this regulation. Third party purchasers will be entitled to an administrative fee not to exceed \$8 per month for each installment payment plan.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Third party purchasers are entitled to a monthly administrative fee not to exceed \$8 per month for each installment payment plan.

(9) TIERING: Is tiering applied? Tiering is not applied. Only third party purchasers as defined in KRS 134.010 shall be allowed to offer a payment plan under the terms established herein, and this regulation treats all third party purchasers the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue within the Finance and Administration Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 134.490 (5).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The costs associated with initially establishing this regulation will be minimal and will be absorbed into the department operating budget.

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

301 KAR 2:225E

This emergency administrative regulation establishes season dates, limits, shooting hours, and other requirements for hunting dove, woodcock, snipe, and other migratory game birds. Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons shall do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the migratory bird season. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on August 27, 2012.

STEVEN L. BESHEAR, Governor

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

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

**301 KAR 2:225E. Dove, wood duck, teal, and other migratory game bird hunting.**

RELATES TO: KRS 150.330, 150.340, 150.603

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21

EFFECTIVE: August 27, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes the requirements[procedures] for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dove" means mourning dove or white-winged dove.

(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.

(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

(4) "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.

Section 2. Season Dates. (1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation.

(2) The following seasons shall apply to migratory bird hunting:

(a) Dove, beginning on:

1. September 1 for fifty-four (54) consecutive days;

2. Thanksgiving Day for nine (9) consecutive days; and

3. The Saturday after Christmas for seven (7) consecutive days.

(b) Woodcock, beginning on November 1 for forty-five (45) consecutive days.

(c) Common snipe, beginning on:

1. The third Wednesday in September for forty (40) consecu-

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

tive days; and

2. Thanksgiving Day for sixty-seven (67) consecutive days.

(d) Wood duck and teal, beginning on the third Wednesday in September for five (5) consecutive days.

(e) Virginia rail, sora rail, common moorhen, and purple gallinule, beginning on September 1 for seventy (70) consecutive days.

(f) Canada goose, beginning September 1 for fifteen (15) consecutive days except that the following areas, as established in 301 KAR 2:224, shall be closed:

1. Public land in the Ballard Zone;~~[Ballard reporting area];~~
2. Public ~~land~~[lands] in the West-Central Goose Zone; and
3. The Northeast Goose Zone.

Section 3. Bag and Possession Limits. (1) A person shall not exceed the following limits:

(a) Dove:

1. Daily limit of fifteen (15); and
2. Possession limit of thirty (30).

(b) Eurasian collared dove: No limit, except that a hunter, if in the field or during transport, shall keep one (1) of the following attached to the bird:

1. The head; or
2. A fully-feathered wing.

(c) Woodcock:

1. Daily limit of three (3); and
2. Possession limit of six (6).

(d) Common snipe:

1. Daily limit of eight (8); and
2. Possession limit of sixteen (16).

(e) Virginia and sora rail, singly or in aggregate:

1. Daily limit of twenty-five (25); and
2. Possession limit of twenty-five (25).

(f) Common moorhen and purple gallinule, singly or in aggregate:

1. Daily limit of fifteen (15); and
2. Possession limit of thirty (30).

(g) Wood duck and teal:

1. Daily limit of four (4), which shall not include more than two (2) wood ducks; and

2. Possession limit of eight (8), which shall not include more than four (4) wood ducks.

(h) Canada goose:

1. Daily limit of two (2); and
2. Possession limit of four (4).

(2) A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep one (1) of the following attached to the bird:

- (a) The head; or
- (b) A fully-feathered wing.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during the times established in this section. (1) If hunting dove on WMA land, a person shall hunt:

(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(2) If hunting dove on private land, a person shall hunt:

(a) Between 11 a.m. and sunset on September 1; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and[20,] 21 for waterfowl hunting;

or

(c) Shot larger than size "T".

Section 6. Hunter Orange. A person shall be exempt from hunter orange requirements pursuant to 301 KAR 2:132 and 2:172 if:

(1) Hunting waterfowl or doves; or

(2) Accompanying a person hunting waterfowl or doves.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A person shall not:

(a) Hunt wood duck or teal on an area closed to waterfowl hunting as established in 301 KAR 2:222;

(b) Hunt in an area marked by a sign as closed to hunting; or

(c) Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on any of the following areas shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and[20,] 21:

(a) Ballard WMA;

(b) Boatwright WMA;

(c) Doug Travis WMA;

(d) Duck Island WMA;

(e) Kaler Bottoms WMA;

(f) Kentucky River WMA;

(g) Ohio River Islands WMA;

(h) Sloughs WMA;

(i) South Shore WMA;

(j) Yatesville Lake WMA; and

(k) A WMA wetland management unit that is posted by sign.

(3) At Ballard WMA, a person shall not hunt:

(a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or

(b) Woodcock.

(4) In the Swan Lake Unit of Boatwright WMA, a person shall not hunt:

(a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or

(b) Woodcock.

(5) At Miller Welch - Central Kentucky WMA, a person shall not hunt:

(a) Dove or snipe after October 13; or

(b) Woodcock.

(6) At Grayson Lake WMA, a person shall not hunt:

(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;

(b) On Deer Creek Fork; or

(c) On Camp Webb property or the state park, except for youths drawn for the quota dove hunt on Camp Webb property on the first Saturday in September.

(7) At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.

(8) At West Kentucky WMA, a person shall not hunt Canada geese during the September season.[hunt:

(a) On "A" Tracts; or

(b) ~~Canada geese during the September season.~~

(9) At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the island.

(10) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 10, 2012

FILED WITH LRC: August 27, 2012 at 4 p.m.

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109 ext. 4507, fax (502) 564-9136, email [fwpubliccomments@ky.gov](mailto: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 seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the United States Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the hunting of migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2012–2013 migratory bird seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national and international management goals.

(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 Canada goose hunting on private lands within the Ballard Zone during the September season.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to increase waterfowl opportunity during the September Canada goose season.

(c) How the amendment conforms to 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: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities in question (3) must continue to comply with this administrative regulation but will not have to comply with any further restrictions than in previous years, but rather hunting opportunity will increase slightly in the Ballard Zone.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be increased opportunity to hunt migratory game birds.

(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 administrative cost to the Department.

(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 implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment. It will not be necessary to increase any other fees or increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all waterfowl bird hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

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. The federal mandate defines the maximum days and bag limits permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives may necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's migratory bird hunters.

**STATEMENT OF EMERGENCY  
900 KAR 6:075E**

This emergency administrative regulation is being promulgated to implement certain time-sensitive changes to the nonsubstantive review process, including the changes required by the passage of HB458 which establishes the requirements for nonsubstantive review processing of applications for a Certificate of Need by physician owned ambulatory surgical centers when criteria are met. This regulation also includes a change to allow an application for a Certificate of Need to be approved under the nonsubstantive review process when the applicant seeks to provide ambulatory surgery services in an existing ambulatory surgery center (ASC) during times when the ASC is not open and will not charge patients for the service or seek payment from other payers. Last, this regulation allows an application for a Certificate of Need to re-establish a licensed healthcare facility or service when the facility or service was voluntarily discontinued under specific circumstances. Failure to enact this administrative regulation on an emergency basis will compromise the health, safety and welfare of patients seeking treatment in physician owned ambulatory surgical centers which must seek a Certificate of Need under HB458. Also, offering ambulatory surgery services in an existing ambulatory surgery center during times when the ASC is not open will allow patients who are unable to pay for the services to receive needed ambulatory surgical services immediately. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
AUDREY TAYSE HAYNES, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Health Policy  
(Emergency Amendment)**

**900 KAR 6:075E. Certificate of Need nonsubstantive review.**

RELATES TO: KRS 216B.010, 216B.095, 216B.455, 216B.990  
STATUTORY AUTHORITY: KRS 194A.030, 194A.050,  
216B.040(2)(a)1

EFFECTIVE: August 23, 2012 at 3 p.m.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

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

(2) "Cabinet" is defined by KRS 216B.015(5).

(3) [(2)] "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

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

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

(6) [(5)] "Nonsubstantive review" is defined by KRS 216B.015(17).

(7) [(6)] "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(8) [(7)] "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(9) [(8)] "Therapeutic cardiac catheterization outcomes" means in hospital mortality rates, door to balloon time, door to balloon time less than or equal to ninety (90) minutes, Percutaneous Coronary Intervention (PCI) related cardiac arrests and emergency open heart surgeries performed as a result of the PCI.

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

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

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

2. The change of location is for a psychiatric residential treatment facility.

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

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

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

(b) The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;

(c) The proposal involves an application to relocate or transfer licensed acute care beds, not including neonatal Level III beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district and the requirements established in this paragraph are met.

1.a. There shall not be an increase in the total number of licensed acute care beds in that area development district; and

b. The hospital from which the beds are relocated delicensures those beds.

2. If neonatal Level II beds are relocated or transferred pursuant to this paragraph:

a. The receiving hospital shall have an existing licensed Level II or Level III neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;

(d) The proposal involves an application by an existing licensed hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Convert and implement the beds on-site at the hospital's existing licensed facility; and

3. Delicense the same number of psychiatric or chemical dependency beds that are converted;

(e) The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;



2. Convert and implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds;

(f) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds between certificate of need approved nursing facilities or from a certificate of need approved nursing facility to a proposed nursing facility and the requirements established in this paragraph are met.

1. The selling or transferring facility has a certificate of need nursing facility bed inventory of at least 250 beds;

2. The transfer or relocation takes place within the same Area Development District;

3. The application includes:

a. A properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055; and

b. Evidence of the selling or transferring entity's binding commitment to sell or transfer upon approval of the application; and

4. A certificate of need approved nursing facility shall not sell or transfer more than fifty (50) percent of its certificate of need approved nursing facility beds;

(g) The proposal involves an application to establish a therapeutic cardiac catheterization program and the requirements established in this paragraph are met.

1. The applicant is an acute care hospital which was previously granted a certificate of need to participate in a primary angioplasty pilot project and was evaluated after the first two (2) years of operation by an independent consultant who determined the hospital successfully demonstrated good therapeutic cardiac catheterization outcomes.

2. The applicant shall document that the nursing and technical catheterization laboratory staff are experienced and participate in a continuous call schedule.

3. The applicant shall document that the catheterization laboratory shall be equipped with optimal imaging systems, resuscitative equipment, and intra-aortic balloon pump support.

4. The applicant shall document that the cardiac care unit nurses shall be proficient in hemodynamic monitoring and intra-aortic balloon pump management.

5. The applicant shall document formalized written protocols in place for immediate and efficient transfer of patients to an existing licensed cardiac surgical facility.

6. The applicant shall utilize a Digital Imaging and Communications in Medicine (DICOM) standard image transfer system between the hospital and the backup surgical facility.

7. The applicant shall employ an interventional program director who has performed more than 500 primary PCI procedures and who is board certified by the American Board of Internal Medicine in interventional cardiology.

8. The applicant shall document that each cardiologist performing the therapeutic catheterizations shall perform at least seventy-five (75) PCIs per year.

9. The applicant shall document the ability to perform at least 200 interventions per year, with ideal minimum of 400 interventions per year by the end of the second year of operation.

10. The applicant shall participate in the American College of Cardiology National Cardiovascular Data Registry quality measurement program.

11. The applicant shall report therapeutic cardiac catheterization data annually to the Cabinet for Health and Family Services.

12. The application shall document the applicant's ability to produce therapeutic cardiac catheterization outcomes which are within two (2) standard deviations of the national means for the first two (2) consecutive years; [e]

(h) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds from one (1) long-term care facility to another long-term care facility and the requirements established in this paragraph are met.

1. The selling or transferring facility fails to meet regulations promulgated by the Centers for Medicare and Medicaid Services at 42 C.F.R. 483.70(a)(8) requiring nursing facilities to install sprinkler systems throughout their buildings;

2. The selling or transferring facility may sell or transfer portions of its total bed component to one (1) or more existing nursing

facility;

3. The facility acquiring the beds shall be located in a county contiguous to that of the selling or transferring facility;

4. The selling or transferring facility shall be licensed only for nursing facility beds at the time of transfer or application to transfer and shall not sell or transfer more than thirty (30) of its licensed nursing facility beds to an individual facility; and

5. The application shall include a properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055;

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

1. The termination of voluntary closure of the former healthcare service or facility:

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

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

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

d. Was not an express condition of any subsequent Certificate of Need approval;

2. The proposed healthcare service shall be provided within the same geographic service area as the former healthcare service;

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

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

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

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

(3) If an application is denied nonsubstantive review status by the Office of Health Policy, the application shall automatically be placed in the formal review process.

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

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

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

(c) Nonsubstantive review applications shall not be comparatively reviewed but may be consolidated for hearing purposes.

(6) If an application for certificate of need is granted nonsubstantive review status by the Office of Health Policy, there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status by the Office of Health Policy shall not be reviewed for consistency with the State Health Plan.

(7) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Health Policy shall approve each application for a certificate of need that has been granted nonsubstantive review status if:

(a) The application does not propose a capital expenditure; or

(b) The application does propose a capital expenditure, and the Office of Health Policy finds the facility or service with respect to which the capital expenditure proposed is needed, unless the cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing

evidence by an affected party.

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

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

(b) Presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

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

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

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

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

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

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 13, 2012

FILED WITH LRC: August 23, 2012 at 3 p.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.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines and considerations for nonsubstantive review of applications for the certificate of need program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 194A.030, 194A.050, 216B.040(2)(a)1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the considerations for nonsubstantive review of certificate of need applications.

(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 KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the considerations for nonsubstantive review of certificate of need applications.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds language to grant nonsubstantive review status to Certificate of Need applications for ambulatory surgical centers owned by physicians filed pursuant to KRS 216B.095(7), proposed ambulatory surgery centers that will utilize the surgery facility of an existing licensed facility and re-establishment of a licensed healthcare facility or service.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add language related to physician owned ambulatory surgical centers as a result of the passage of HB 458 in the 2012 Regular Session of the General Assembly. This legislation was signed by the Governor on April 11, 2012.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 194A.030, 194A.050, 216B.040(2)(a)1, and KRS 216B.095 by establishing the considerations for nonsubstantive review of certificate of need applications.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow applications submitted by physician owned ambulatory surgical centers, meeting KRS 216B.095 (7) requirements, ambulatory surgery centers providing free services, and previously licensed healthcare facilities seeking re-establishment to be granted nonsubstantive review for a certificate of need.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a certificate of need application. Approximately 100 entities file a certificate of need application each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the considerations for nonsubstantive review of certificate of need applications set forth in the administrative regulation are currently established and operational, no new action will be required of regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the considerations for nonsubstantive review of certificate of need applications set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide potential health care providers with a mechanism to establish health care facilities and services under non-substantive review.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

(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 does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services as well as the Office of Health Policy within the Cabinet for Health and Family Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030, 194A.050, 216B.040(2)(a)1.

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



the first full year the administrative regulation is to be in effect. None.

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

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

(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 (+/-): None

Expenditures (+/-): None

Other Explanation: None

# **STATEMENT OF EMERGENCY** **907 KAR 9:005E**

This emergency administrative regulation is being promulgated to establish service and coverage policies for Level I and Level II psychiatric residential treatment facility (PRTF) services. Previously there was one (1) category of such services – PRTF services – then KRS 216B.450 created two (2) categories – Level I and Level II PRTF services. A companion administrative regulation, 907 KAR 9:010, establishes the reimbursement policies for Level I and Level II PRTF services. This action must be implemented on an emergency basis to comport with KRS 216B.450 and to establish Medicaid service and coverage policies for providers of Level I and Level II PRTF services; thus, ensuring the reimbursement for the services and protecting the health, safety, and welfare of Medicaid recipients who receive such services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

AUDREY HAYNES, Secretary

## **CABINET FOR HEALTH AND FAMILY SERVICES** **Department for Medicaid Services** **Division of Healthcare Facilities Management** **(Emergency Amendment)**

**907 KAR 9:005E. Level I and II psychiatric residential treatment facility service and coverage policies[services].**

RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.160, 42 U.S.C. 1396a-d[, EO-2004-726]

EFFECTIVE: September 4, 2012

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, 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 a responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes Medicaid program coverage policies regarding Level I and Level II[provisions relating to coverage of] psychiatric residential treatment facility services.

Section 1. Definitions. (1) "Active treatment" means a covered

Level I or II psychiatric residential treatment facility [(PRTF)]service provided:

(a)[Including nursing care, mental health, case coordination, psychiatric therapies, task and skills training] In accordance with an individual plan of care as specified in 42 C.F.R. 441.154; and

(b)[Provided] By an individual employed or contracted by a Level I or II PRTF including a:

1. Psychiatrist;

2. Qualified mental health personnel;

3. Qualified mental health professional;

4. Mental health associate; or

5. Direct care staff person.

(2) "Acute care hospital" is defined by KRS 205.639(1).

(3) "Child with a severe emotional disability" is defined by KRS 200.503(2).

(4)[2. Social worker; or

3. Direct care staff person; and

(c) Which shall not be subcontracted.

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

(5) "Diagnostic and assessment services" means at least one (1) face-to-face specialty evaluation of a recipient's medical, social, and psychiatric status provided by a physician or qualified mental health professional that shall:

(a) Include testing and interviewing;

(b) Be documented and record all contact with the recipient and other interviewed individuals; and

(c) Result in a:

1. Diagnosis code in accordance with 45 C.F.R. 162.1000; and

2. Specific treatment recommendation.

(6) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(7) "Intensive treatment services" means a program:

(a) For a child:

1. With a severe emotional disability; and

a. A severe and persistent aggressive behavior, intellectual disability, or sexually acting out behavior; or

b. A developmental disability;

2. Who requires a treatment-oriented residential environment; and

3. Between the ages of four (4) to twenty-one (21) years; and

(b) That provides psychiatric and behavioral health services two (2) or more times per week to a child referenced in paragraph (a) of this subsection:

1. As indicated by the child's psychiatric and behavioral health needs; and

2. In accordance with the child's therapeutic plan of care.

(8) "Interdisciplinary team" means:

(a) For a recipient who is under the age of eighteen (18) years:

1. A parent, legal guardian, or care giver of the recipient;

2. The recipient;

3. A qualified mental health professional; and

4. The staff person, if available, who worked with the recipient during the recipient's most recent placement if the recipient has previously been in a Level I or II PRTF; or

(b) For a recipient who is eighteen (18) years of age or older:

1. The recipient;

2. A qualified mental health professional; and

3. The staff person, if available, who worked with the recipient during the recipient's most recent placement if the recipient has previously been in a Level I or II PRTF.

(9) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(10) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(11)[(3)] "Medicaid payment status" means a circumstance in which:

(a) The person:

1. Is eligible for and receiving Medicaid benefits; and

2. Meets patient status criteria for Level I or II psychiatric residential treatment facility [(PRTF)]services; and

(b) The facility is billing the Medicaid program for services provided to the person.

(12)[(4)] "Medically necessary" or "medical necessity" means

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(13) "Mental health associate" is defined by 902 KAR 20:320.

(14) "Physician" is defined by KRS 311.550(12).

(15) "Private psychiatric hospital" is defined by KRS 205.639(2).

(16) "Psychiatric services" means:

(a) An initial psychiatric evaluation of a recipient which shall include:

1. A review of the recipient's:

a. Personal history;

b. Family history;

c. Physical health;

d. Prior treatment; and

e. Current treatment;

2. A mental status examination appropriate to the age of the recipient;

3. A meeting with the family or any designated significant person in the recipient's life;

4. Ordering and reviewing:

a. Laboratory data;

b. Psychological testing results; or

c. Any other ancillary health or mental health examinations;

(b) Development of an initial plan of treatment which shall include:

1. Prescribing and monitoring of psychotropic medications; or

2. Providing and directing therapy to the recipient;

(c) Implementing, assessing, monitoring, or revising the treatment as appropriate to the recipient's psychiatric status;

(d) Providing a subsequent psychiatric evaluation as appropriate to the recipient's psychiatric status; and

(e) Consulting with another physician, an attorney, police, a school, a treatment program, or other organization regarding the recipient's care and treatment.

(17) shall be:

(a) Provided in accordance with 42 C.F.R. 440.230;

(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(c) Clinically appropriate in terms of amount, scope, and duration based on generally accepted standards of good medical practice;

(d) Provided for medical reasons rather than primarily for the convenience of the recipient, caregiver, or the provider;

(e) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;

(f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; and

(g) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 U.S.C. 1396d(r) and 42 C.F.R. Part 441 Subpart B for Medicaid-eligible persons under twenty-one (21) years of age.

(5) "Psychiatric residential treatment facility" or "PRTF" is defined by KRS 216B.450(5).

(18) "Qualified mental health personnel" is defined by KRS 216B.450(6).

(19) "Qualified mental health professional" is defined by KRS 216B.450(7).

(20) "State mental hospital" is defined by KRS 205.639(3).

(21) "Treatment plan" means a plan created for the care and treatment of a recipient that:

(a) Is developed in a face-to-face meeting by the recipient's interdisciplinary team;

(b) Describes a comprehensive, coordinated plan of medically necessary behavioral health services that specifies a modality, frequency, intensity, and duration of services sufficient to maintain the recipient in a PRTF setting; and

(c) Identifies:

1. A program of therapies, activities, interventions, or experiences designed to accomplish the plan;

2. A qualified mental health professional, a mental health as-

sociate, or qualified mental health personnel who shall manage the continuity of care;

3. Interventions by care givers in the PRTF and school setting that support the recipient's ability to be maintained in a PRTF setting;

4. Behavioral, social, and physical problems with interventions and objective, measurable goals;

5. Discharge criteria for each of the requested services that specifies the:

a. Recipient-specific behavioral indicators for discharge from the service;

b. Expected service level that would be required upon discharge; and

c. Identification of the intended provider to deliver services upon discharge;

6. A crisis action plan that progresses through a continuum of care that is designed to reduce or eliminate the necessity of inpatient services;

7. A plan for:

a. Transition to a lower intensity of services; and

b. Discharge from PRTF services;

8. An individual behavior management plan;

9. A plan for the involvement and visitation of the recipient with the birth family, guardian, or other significant person, unless prohibited by a court, including therapeutic off-site visits pursuant to the treatment plan; and

10. Services and planning, beginning at admission, to facilitate the discharge of the recipient to an identified plan for home-based services or a lower level of care [KRS 216B.450(4)].

Section 2. Provider Participation. (1) In order to participate, or continue to participate, in the Kentucky Medicaid Program, a:

(a) Level I PRTF shall:

1. Have a utilization review plan for each recipient consisting of, at a minimum, a pre-admission certification review submitted via telephone or electronically to the review agency prior to admission of the recipient;

2. Perform and place in each recipient's record:

a. A medical evaluation;

b. A social evaluation; and

c. A psychiatric evaluation;

3. Establish a plan of care for each recipient which shall be placed in the recipient's record;

4. Appoint a utilization review committee which shall:

a. Oversee and implement the utilization review plan; and

b. Evaluate each Medicaid admission and continued stay prior to the expiration of the Medicaid certification period to determine if the admission or stay is or remains medically necessary;

5. [PRTF shall:

(a) Have a utilization review plan which complies with 907 KAR 10:016;

(b) Appoint a utilization review committee which complies with 907 KAR 10:016 to:

1. Oversee and implement the utilization review plan; and

2. Evaluate each Medicaid admission prior to the expiration of the Medicaid certification period to determine the admission's compliance with medical necessity criteria and other applicable Medicaid requirements;

(e) Comply with staffing requirements established in 902 KAR 20:320;

6. [(d)] Be located in the Commonwealth [state] of Kentucky;

7. [(e)] Maintain accreditation by the Joint Commission on Accreditation of Health Care Organizations [(JCAHO)] or the Council on Accreditation of Services for Families and Children or any other accrediting body with comparable standards that is recognized by the state; and

8. [(f)] Comply with all conditions of Medicaid provider participation established in 907 KAR 1:671 and 907 KAR 1:672.

(b) A Level II PRTF shall:

1. Have a utilization review plan for each recipient;

2. Establish a utilization review process which shall evaluate each Medicaid admission and continued stay prior to the expiration of the Medicaid certification period to determine if the admission or

VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

stay is or remains medically necessary:

3. Comply with staffing requirements established in 902 KAR 20:320;

4. Be located in the Commonwealth of Kentucky;

5. Maintain accreditation by the Joint Commission on Accreditation of Health Care Organizations or the Council on Accreditation of Services for Families and Children or any other accrediting body with comparable standards that is recognized by the state;

6. Comply with all conditions of Medicaid provider participation established in 907 KAR 1:671 and 907 KAR 1:672;

7. Perform and place in each recipient's record a:

a. Medical evaluation;

b. Social evaluation; and

c. Psychiatric evaluation; and

8. Establish a plan of care for each recipient which shall:

a. Address in detail the intensive treatment services to be provided to the recipient; and

b. Be placed in the recipient's record.

(2) A pre-admission certification review:

(a) For a Level I PRTF shall:

1. Contain:

a. The recipient's valid Medicaid identification number;

b. A valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 44.152 and 44.153 for patients age twenty-one (21) and under;

c. A DMS-IV R diagnosis on all five (5) axes, except that failure to record an axis IV and V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level I PRTF treatment;

d. A description of the initial treatment plan relating to the admitting symptoms;

e. Current symptoms requiring inpatient treatment;

f. Information to support the medical necessity and clinical appropriateness of the services or benefits of the admission to a Level I PRTF in accordance with 907 KAR 3:130;

g. Medication history;

h. Prior hospitalization;

i. Prior alternative treatment;

j. Appropriate medical, social, and family histories; and

k. Proposed aftercare placement;

2. Remain in effect for the days certified by the review agency;

and

3. Be completed within thirty (30) days; or

(b) For a Level II PRTF for a non emergent admission shall:

1. Contain:

a. The recipient's valid Medicaid identification number;

b. A valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 44.152 and 44.153 for patients age twenty-one (21) and under;

c. A DSM-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV and V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level II PRTF treatment;

d. A description of the initial treatment plan relating to the admitting symptoms;

e. Current symptoms requiring inpatient treatment;

f. Information to support the medical necessity and clinical appropriateness of the services or benefits of the admission to a Level II PRTF in accordance with 907 KAR 3:130;

g. Medication history;

h. Prior hospitalization;

i. Prior alternative treatment;

j. Appropriate medical, social, and family histories; and

k. Proposed aftercare placement;

2. Remain in effect for the days certified by the review agency;

and

3. Be completed within thirty (30) days.

(3) Failure to admit a recipient within the recipient's certification period shall

require a new pre-admission review certification request.

(4) A utilization review plan for an emergency admission to a Level II PRTF shall contain:

(a) A completed MAP 570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-One (21):

1. Completed by the facility's interdisciplinary team; and

2. Placed in the recipient's medical record;

(b) Documentation, provided by telephone or electronically to the review agency within two (2) days of the recipient's emergency admission, justifying:

1. The recipient's emergency admission;

2. That ambulatory care resources in the recipient's community and placement in a Level I PRTF do not meet the recipient's needs;

3. That proper treatment of the recipient's psychiatric condition requires services provided by a Level II PRTF under the direction of a physician; and

4. That the services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services are no longer needed;

(c) The recipient's valid Medicaid identification number;

(d) A valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 44.152 and 44.153 for recipients age twenty-one (21) and under;

(e) A DMS-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV and V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level II PRTF treatment;

(f) 1. A description of the initial treatment plan relating to the admitting symptom; and

2. The initial treatment plan shall provide a full description of the intensive treatment services to be provided to the recipient;

(g) Current symptoms requiring residential treatment;

(h) Medication history;

(i) Prior hospitalization;

(j) Prior alternative treatment;

(k) Appropriate medical, social, and family histories; and

(l) Proposed aftercare placement.

(5) [(2) A PRTF shall establish procedures and processes for review, evaluation and individual plan of care development in accordance with 907 KAR 1:016.

(3) For an elective admission of a recipient, an independent team shall, within a period not more than thirty (30) days prior to the admission, complete and sign a MAP 569, Certification of Need form in accordance with 42 C.F.R. 44.152 and 42 C.F.R. 44.153, and the form shall be placed in the recipient's medical record to verify compliance with this requirement.

(4) For an emergency admission of a recipient, a PRTF's interdisciplinary team shall complete a MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for individuals under age twenty-one (21), and the form shall be placed in the recipient's medical record.

(5) For an individual who becomes Medicaid eligible after admission, a Level I or II PRTF's interdisciplinary team shall complete a MAP 570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-One (21), and the form shall be placed in the recipient's medical record.

(6) For a recipient, a Level I or II PRTF shall maintain medical records that shall:

(a) Be;

1. Current;

2. Readily retrievable;

3. Organized;

4. Complete; and

5. Legible;

(b) Reflect sound medical recordkeeping practice in accordance with:

1. 902 KAR 20:320;

2. KRS 194A.060;

3. KRS 434.840 through 434.860;

4. KRS 422.317; and

5. 42 C.F.R. 431 Subpart F;

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(c) Document the need for admission and appropriate utilization of services; ~~current, readily retrievable, organized, complete, legible and shall reflect sound medical recordkeeping practice, in accordance with 902 KAR 20:320, KRS 194A.060, 434.840-860, 422.317 and 42 C.F.R. 431 Subpart F;~~

(b) Document the need for admission and appropriate utilization of services;

(c) Show that the recipient was receiving intensive treatment services in accordance with 907 KAR 1:016;]

(d) Be maintained [in an organized central file], including information regarding payments claimed, for a minimum of six (6) [five (5)] years or until an audit dispute or issue is resolved, whichever is longer; and

(e) Be made available for inspection or[.] copying or provided to the following upon request:

1. A representative of the United States Department for Health and Human Services or its designee;

2. The United States Office of the Attorney General or its designee;

3. The Commonwealth of Kentucky, Office of the Attorney General or its designee;

4. The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designee;

5. The Commonwealth of Kentucky, Cabinet for Health and Family Services, Office of the Inspector General or its designee;[or]

6. The department; or

7. A managed care organization with whom the department has contracted.

Section 3. Covered Admissions. A covered admission for a:

(1) Level I PRTF:

(a) Shall be:

1. Prior authorized; and

2. Reimbursed pursuant to 907 KAR 9:010; and

(b)1. Shall be limited to those for a child age six (6) through twenty (20) years of age who meets Medicaid payment status criteria; or

2. May continue based on medical necessity, for a recipient who is receiving active treatment in a Level I PRTF on the recipient's 21st birthday if the recipient has not reached his or her 22nd birthday.

(2) Level II PRFT shall be:

(a) Prior authorized;

(b) Limited to those for a child:

1.a. Age four (4) through twenty-one (21) years who meets Medicaid payment status criteria; and

b. Whose coverage may continue, based on medical necessity, if the recipient is receiving active treatment in a Level II PRTF on the recipient's 21st birthday and the recipient has not reached his or her 22nd birthday;

2. With a severe emotional disability in addition to severe and persistent aggressive behaviors, intellectual disability, sexually acting out behaviors, or a developmental disability; and

3.a. Who does not meet the medical necessity criteria for an acute care hospital, private psychiatric hospital, or state mental hospital; and

b. Whose treatment needs cannot be met in an ambulatory care setting, Level I PRTF, or in any other less restrictive environment; and

(c) Reimbursed pursuant to 907 KAR 9:010.

Section 4. PRTF Covered Services and Coverage Criteria. (1) To be covered by the department:

(a) The following services shall be prior authorized and meet the requirements established in paragraph (b) of this subsection:

1. Diagnostic and assessment services;

2. Treatment plan development;

3. Psychiatric services;

4. Nursing services which shall be provided in compliance with 902 KAR 20:320;

5. Medication which shall be provided in compliance with 907 KAR 1:019;

6. Evidence-based treatment interventions;

7. Individual therapy which shall comply with 902 KAR 20:320;

8. Family therapy which shall comply with 902 KAR 20:320;

9. Group therapy which shall comply with 902 KAR 20:320;

10. Individual and group interventions that shall focus on additional and harmful use or abuse issues and relapse prevention if indicated;

11. Substance abuse education which shall comply with 902 KAR 20:320;

12. Activities that:

a. Support the development of an age-appropriate daily living skill including positive behavior management or support; or

b. Support and encourage the parent's ability to re-integrate the child into the home;

13. Crisis intervention which shall comply with:

a. 42 C.F.R. 483.350 through 483.376; and

b. 902 KAR 20:320;

14. Consultation with other professionals including case managers, primary care professionals, community support workers, school staff, or others;

15. Educational activities; or

16. Non medical transportation services as needed to accomplish objectives;

(b) A Level I PRTF service listed in paragraph (a) of this subsection shall be:

1. Provided under the direction of a physician;

2. Described in the recipient's current treatment plan;

3. Provided at least once per week, except for diagnostic and assessment services which shall have no weekly minimum requirement;

4. Medically necessary; and

5. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c) A Level I PRTF service listed in paragraph (a)7, 8, 9, 11, or 13 of this subsection shall be provided by a qualified mental health professional; or

(d) A Level II PRTF service listed in paragraph (a) of this subsection shall be:

1. Provided under the direction of a physician;

2. Described in the recipient's current treatment plan;

3. Provided at least once a week;

a. Unless the service is necessary twice a week, in which case the service shall be provided at least twice a week; or

b. Except for diagnostic and assessment services which shall have no weekly minimum requirement;

4. Medically necessary; and

5. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

(2) A Level II PRTF service listed in subsection (1)(a)7, 8, 9, 11, or 13 of this section shall be provided by a qualified mental health professional.

Section 5. Determining Patient Status. (1) The department shall review and evaluate the health status and care needs of a recipient in need of Level I or II PRTF care using the criteria identified in 907 KAR 3:130 to determine if a service or benefit is clinically appropriate.

(2) The care needs of a recipient shall meet the patient status criteria for:

(a) Level I PRTF care if the recipient requires:

1. Long term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF than in a psychiatric hospital; and

2. Level I PRTF services on a continuous basis as a result of a severe mental or psychiatric illness, including a severe emotional disturbance; or

(b) Level II PRTF care if the recipient:

1. Is a child with a severe emotional disability;

2. Requires long term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF than a psychiatric hospital;

3. Requires Level II PRTF services on a continuous basis as a result of a severe emotional disability in addition to a severe and persistent aggressive behavior, an intellectual disability, a sexually acting out behavior, or a developmental disability; and

4. Does not meet the medical necessity criteria for an acute

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

care hospital or a psychiatric hospital and has treatment needs which cannot be met in an ambulatory care setting, Level I PRTF, or other less restrictive environment.

Section 6. Durational Limit, Re-evaluation, and Continued Stay. (1) A recipient's stay, including the duration of the stay, in a Level I or II PRTF shall be subject to the department's approval.

(2)(a) A recipient in a Level I PRTF shall be re-evaluated at least once every thirty (30) days to determine if the recipient continues to meet Level I PRTF patient status criteria.

(b) A Level I PRTF shall complete a review of each recipient's treatment plan of care at least once every thirty (30) days.

(c) The review referenced in paragraph (b) of this subsection shall include:

1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;

2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and

3. A statement of justification for the level of services needed including:

a. Suitability for treatment in a less-restrictive environment; and

b. Continued services.

(d) If a recipient no longer meets Level I PRTF patient status criteria, the department shall only reimburse through the last day of the individual's current approved stay.

(3) A Level II PRTF shall complete by no later than the third day following an admission, an initial review of services and treatment provided to a recipient which shall include:

(a) Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;

(b) An assessment of progress toward each treatment plan goal and objective with revisions indicated; and

(c) A statement of justification for the level of services needed including:

1. Suitability for treatment in a less-restrictive environment; and

2. Continued services.

(4)(a) For a recipient aged four (4) to five (5) years, a Level II PRTF shall complete a review of the recipient's treatment plan of care at least once every fourteen (14) days after the initial review referenced in subsection (3) of this section.

(b) The review referenced in paragraph (a) of this subsection shall include:

1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;

2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and

3. A statement of justification for the level of services needed including:

a. Suitability for treatment in a less-restrictive environment; and

b. Continued services.

(5)(a) For a recipient aged six (6) to twenty-two (22) years, a Level II PRTF shall complete a review of the recipient's treatment plan of care at least once every thirty (30) days after the initial review referenced in subsection (3) of this section.

(b) The review referenced in paragraph (a) of this subsection shall include:

1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;

2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and

3. A statement of justification for the level of services needed including:

a. Suitability for treatment in a less-restrictive environment; and

b. Continued services.

Section 7.] shall be:

(1) Preauthorized;

(2) Limited to those for children age six (6) through twenty (20) years of age who meet Medicaid payment status criteria. Coverage may continue, based on medical necessity, for a recipient who is receiving active treatment in a PRTF on his 21st birthday so long as he has not reached his 22nd birthday; and

(3) Reimbursed in accordance with 907 KAR 9:010.

Section 4. Durational Limitations. Recipient stays shall be subject to utilization review by the cabinet.

Section 5. Determining Patient Status. (1) The department shall review and evaluate the health status and care needs of a recipient in need of inpatient psychiatric care using the same standards as established for inpatient psychiatric hospital care in 907 KAR 10:016.

(2) The care needs of a recipient shall meet PRTF patient status criteria only if:

(a) The individual meeting the patient status criteria in 907 KAR 10:016 requires long-term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF rather than a psychiatric hospital; and

(b) The recipient requires PRTF services on a continuous basis as a result of a severe mental or psychiatric illness, including severe emotional disturbances.

Section 6. Reevaluation of Need for Services. Patient status shall be reevaluated for a PRTF recipient at thirty (30) day intervals. If a reevaluation reveals the recipient no longer requires PRTF care, payment shall continue only through the last day for which the stay is certified.

Section 7.] Exclusions and Limitations in Coverage. (1) The following shall not be covered as Level I or II PRTF services:

(a) 1. Chemical dependency treatment services if the need for the services is the primary diagnosis of the recipient, except [However,] chemical dependency treatment services shall be covered as incidental treatment if minimal chemical dependency treatment is necessary for successful treatment of the primary diagnosis;

(b) Outpatient services;

(c) Pharmacy services, which shall be covered [as pharmacy services] in accordance with 907 KAR 1:019; [or]

(d) Durable medical equipment, which shall be covered [as a durable medical equipment benefit] in accordance with 907 KAR 1:479;

(e) Hospital emergency room services, which shall be covered in accordance with 907 KAR 10:014;

(f) Acute care hospital inpatient services, which shall be covered in accordance with 907 KAR 10:012;

(g) Laboratory and radiology services, which shall be covered in accordance with 907 KAR 10:014 or 907 KAR 1:028;

(h) Dental services, which shall be covered in accordance with 907 KAR 1:026;

(i) Hearing and vision services, which shall be covered in accordance with 907 KAR 1:038; or

(j) Ambulance services, which shall be covered in accordance with 907 KAR 1:060.

(2) A Level I or II PRTF shall not charge a recipient or responsible party representing a recipient any difference between private and semiprivate room charges.

(3) The department shall not reimburse for Level I or II PRTF services for a recipient [Services shall not be covered] if appropriate alternative services are available for the recipient in the community.

(4) The following shall not qualify as reimbursable in a PRTF setting [for a PRTF service]:

(a) An admission that is not medically necessary;

(b) Services for an individual;

1. With a major medical problem or minor symptoms;

2. [c] An individual] Who might only require a psychiatric consultation rather than an admission to a PRTF [psychiatric facility]; or

3. [d] An individual] Who might need only adequate living accommodations, economic aid, or social support services.

Section 8. Reserved Bed Days. (1) The department may cover a bed reserve day for a recipient's absence from a Level I or II PRTF if:

(a) The recipient:

1. Is in Medicaid payment status in a Level I or II PRTF;

2. Has been in the Level I or II PRTF overnight for at least one (1) night;

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

3. Is reasonably expected to return requiring Level I or II PRTF care; and

4. Has not exceeded the bed reserve day limit established in subsection (2) of this section; and

(b) The Level I or II PRTF's occupancy percent is at least fifty (50) percent.

(2)(a) The annual bed reserve day limit per recipient per Level I or II PRTF shall be five (5) days per calendar year.

(b) The department may allow a recipient to exceed the limit established in paragraph (a) of this subsection, if the department determines that an additional bed reserve day is in the best interest of the recipient.

Section 9. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or

(2) Disapproves the policy. ~~The department shall cover reserved bed days in accordance with the following specified upper limits and criteria:~~

~~(1) Upper limits for reserved beds shall be applied as follows:~~

~~(a) A maximum of fourteen (14) days per admission for an acute care hospital stay;~~

~~(b) A maximum of fourteen (14) days per calendar year for an admission to a mental hospital or a psychiatric bed of an acute care hospital;~~

~~(c) A maximum of twenty one (21) days per six (6) months during a calendar year for other leaves of absence; and~~

~~(d) A maximum of thirty (30) consecutive days for hospital and other leaves of absence combined.~~

~~(2) The following criteria shall be met for reserved bed days to be covered:~~

~~(a) The recipient shall be in Medicaid payment status in the PRTF and shall have been in the facility at least overnight;~~

~~(b) The recipient shall be reasonably expected to return to PRTF level of care;~~

~~(c) Due to the demand at the facility for PRTF care, there is likelihood the bed would be occupied by some other patient, if it had not been reserved;~~

~~(d) Hospitalization shall be in a Medicaid-participating hospital with the admission~~

~~appropriately approved by the department; and~~

~~(e) For a leave of absence other than for hospitalization, the recipient's physician orders, and the recipient's plan of care shall provide for, a leave, which may include a leave of absence to visit with relatives and friends.]~~

Section 10.[9.] Appeal Rights. (1) An appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 11.[10.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21)", revised 5/90; and

(b) "MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-one (21)", revised 5/90.

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

LAWRENCE KISSNER, Commissioner

AUDREY HAYNES, Secretary

APPROVED BY AGENCY: August 9, 2012

FILED WITH LRC: September 4, 2012 at 11 a.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: Jill Hunter or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid coverage policies regarding Level I and II psychiatric residential treatment facility (PRTF) services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid coverage policies regarding Level I and II PRTF services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid coverage policies regarding Level I and II PRTF services.

(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 authorizing statutes by establishing Medicaid coverage policies regarding Level I and II PRTF services.

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

(a) How the amendment will change this existing administrative regulation: Previously, Kentucky law established one category of psychiatric residential treatment facility services. In 2010, the Kentucky legislature enacted legislation which created two levels of PRTF services – Level I and II. This amendment replaces the coverage policies for the prior lone designation of psychiatric residential treatment facility services with coverage policies for Level I and II PRTF services respectively.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comport with KRS 216B.450.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 216B.450 by establishing Medicaid coverage policies regarding Level I and II PRTF services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 216B.450 by establishing Medicaid coverage policies regarding Level I and II PRTF services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and Level II psychiatric residential treatment facilities will be affected by the amendment. Level I and II PRTF beds are awarded through a certificate of need process. The Office of Certificate of Need has limited the number of Level I PRTF beds statewide to 315 and the number of Level II PRTF beds to 145 statewide. Of the 315 Level I beds, 303 are currently filled and span thirty-three (33) facilities. Of the 145 Level II PRTF beds, 132 are currently filled and among six (6) facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Level I and II PRTFs will have to comply with service 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 imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Participating Level I and II PRTFs will be recognized by the Medicaid program as authorized service providers.

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

(a) Initially: Level I and II PRTF services are in the scope of

managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

(b) On a continuing basis: Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

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

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

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

(9) Tiering: Is tiering applied? Tiering is applied as individuals receiving care in a Level II PRTF have more intensive needs than children in a Level I PRTF; thus, some service requirements vary accordingly.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(16), 42 U.S.C. 1396d(h), 42 C.F.R. 441.151 and 42 C.F.R. 440.160.

2. State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.

3. Minimum or uniform standards contained in the federal mandate. Per federal Medicaid law, inpatient psychiatric facility services for individuals under twenty-one (21) is not a mandatory Medicaid benefit, but if a state's state plan includes intermediate care facility services for individuals with mental retardation, it must also cover inpatient psychiatric facility services for individuals under twenty-one (21). Additionally, states may be required to provide inpatient psychiatric care under the early and periodic screening, diagnosis and treatment program (EPSDT).

Pursuant to 42 C.F.R. 440.160, "Inpatient psychiatric services for individuals under age 21" means services that-

(a) Are provided under the direction of a physician;

(b) Are provided by-

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in §441.151 of this subchapter."

Additionally, 42 C.F.R. 441.151 states, "(a) Inpatient psychiatric services for individuals under age 21 must be:

(1) Provided under the direction of a physician;

(2) Provided by—

(i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities,

the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.

(3) Provided before the individual reaches age 21, or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—

(i) The date the individual no longer requires the services; or

(ii) The date the individual reaches 22; and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with §441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in §483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 441.151 and 42 C.F.R. 440.160.

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

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

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

(c) How much will it cost to administer this program for the first year? Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

(d) How much will it cost to administer this program for subsequent years? Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

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  
907 KAR 9:010E**

This emergency administrative regulation is being promulgated to amend reimbursement for psychiatric residential treatment facility (PRTF) services. Currently, the Department for Medicaid Services (DMS) recognizes one (1) level of PRTF services; however, KRS 216B.450 created two (2) categories of PRTF services – Level I and Level II. A companion administrative regulation, 907 KAR 9:005, establishes the service and coverage policies for Level I and Level II PRTF services and this amended administrative regulation establishes the corresponding reimbursement for Level I and Level II PRTF services. This action must be implemented on an emergency basis to comport with KRS 216B.450 and to establish Medicaid reimbursement policies for providers of Level I and Level II PRTF services; thus, ensuring the reimbursement for the services and protecting the health, safety, and welfare of Medicaid recipients who receive such services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
AUDREY TAYSE HAYNES, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Healthcare Facilities Management  
(Emergency Amendment)**

**907 KAR 9:010E. Reimbursement for Level I and II [Payments for] psychiatric residential treatment facility services.**

RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459  
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.160, 42 U.S.C. 1396a-d[~~EO-2004-726~~]  
EFFECTIVE: September 4, 2012  
NECESSITY, FUNCTION, AND CONFORMITY:[~~EO-2004-726, effective July 9, 2004, 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) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[~~for the provision of medical assistance to Kentucky's indigent citizenry~~]. This administrative regulation establishes Medicaid reimbursement policies for Level I and Level II psychiatric residential treatment facility services provided to a Medicaid recipient who is not enrolled in a managed care organization.[~~sets forth provisions relating to payments for psychiatric residential treatment facility services.~~]

Section 1. Definition. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(3) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(4) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(5) "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(6) "Per diem rate" means a Level I or II PRTF's total, all-inclusive, daily reimbursement as calculated by the department.

(7) "Recipient" is defined by KRS 205.8451(9).

Section 2. Reimbursement for Level I PRTF Services and Costs. (1) To be reimbursable under the Medicaid program, Level I

PRTF services and associated costs, respectively, shall be provided to or associated, respectively, with a recipient receiving Level I PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse for Level I PRTF services and costs referenced in subsection (4) of this section for a recipient not enrolled in a managed care organization:

(a) At the lesser of:

1. A per diem rate of \$274.01; or

2. The usual and customary charge; and

(b) An amount not to exceed the prevailing charges, in the locality where the Level I PRTF is located, for comparable services provided under comparable circumstances.

(3) The per diem rate referenced in subsection (2) of this section shall be increased each biennium by 2.22 percent.

(4) The per diem rate referenced in subsection (2) of this section, or usual and customary charge if less than the per diem rate, shall represent total Medicaid reimbursement for Level I PRTF services and costs:

(a) Including all care and treatment costs;

(b) Including costs for all ancillary services;

(c) Including capital costs;

(d) Including room and board costs; and

(e) Excluding the costs of drugs as drugs shall be:

1. Covered in accordance with 907 KAR 1:019; and

2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 1:018.

Section 3. Reimbursement for Level II PRTF Services and Costs. (1) To be reimbursable under the Medicaid program, Level II PRTF services and associated costs, respectively, shall be provided to or associated, respectively, with a recipient receiving Level II PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse a per diem rate as follows for Level II PRTF services and costs for a recipient not enrolled in a managed care organization:

(a) \$345 for a rate group one (1) Level II PRTF;

(b) \$365 for a rate group two (2) Level II PRTF;

(c) \$385 for a rate group three (3) Level II PRTF; or

(d) \$405 for a rate group four (4) Level II PRTF.

(3)(a) A rate group one (1) Level II PRTF shall be a Level II PRTF that serves recipients who are not enrolled in a managed care organization and are:

1. Aged twelve (12) years or younger;

2. Male or female; and

3.a. Sexually reactive; or

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Do not have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient higher than seventy (70).

(b) A rate group two (2) Level II PRTF shall be a Level II PRTF which serves recipients who are not enrolled in a managed care organization and are:

1. Aged twelve (12) years or younger;

2. Male or female; and

3.a. Sexually reactive; and

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Do not have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient higher than seventy (70).

(c) A rate group three (3) Level II PRTF shall be a Level II PRTF which serves recipients who are not enrolled in a managed care organization and are:

1. Aged thirteen (13) years or older;

2. Male or female; and

3.a. Sexually reactive; or

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Do not have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient higher than seventy (70).



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(d) A rate group three (3) Level II PRTF shall be a Level II PRTF which serves recipients who are not enrolled in a managed care organization and are:

1. Aged thirteen (13) years or older;

2. Male or female; and

3.a. Sexually reactive; and

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Do not have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient higher than seventy (70).

(e) A rate group four (4) Level II PRTF shall be a Level II PRTF which serves recipients who are not enrolled in a managed care organization and are:

1. Under twenty-two (22) years of age;

2. Male or female; and

3.a. Sexually reactive; or

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient lower than seventy (70).

(4) The per diem rates referenced in subsection (2) of this section, or usual and customary charge if less than the per diem rate, shall represent total Medicaid reimbursement for Level II PRTF services and costs:

(a) Including all care and treatment costs;

(b) Including costs for all ancillary services;

(c) Including capital costs;

(d) Including room and board costs; and

(e) Excluding the costs of drugs as drugs shall be:

1. Covered in accordance with 907 KAR 1:019; and

2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 1:018.

(5) The department shall annually evaluate a per diem rate for Level II PRTF services and costs by reviewing the most recent, reliable claims' data and cost report data to analyze treatment patterns, technology, and other factors that may alter the cost of efficiently providing Level II PRTF services.

Section 4. Cost Reports and Audits. (1) A Level I or II PRTF shall annually submit to the department, within ninety (90) days of the closing date of the facility's fiscal year end, a legible and completed Form CMS 2552-96.

(2) A Form CMS 2552-96 shall be subject to review and audit by the department.

Section 5. Access to Level I and II PRTF Fiscal and Services Records. A Level I or II PRTF shall provide, upon request, all fiscal and service records, to the:

(1) Department;

(2) Cabinet for Health and Family Services, Office of Inspector General;

(3) Commonwealth of Kentucky, Office of the Attorney General;

(4) Commonwealth of Kentucky, Auditor of Public Accounts;

(5) Secretary of the United States Department of Health and Human Services; or

(6) United States Office of the Attorney General.

Section 6. Bed Reserve Reimbursement. (1) The department's reimbursement for a bed reserve day which qualifies as a bed reserve day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:

(a) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least ninety-five (95) percent; or

(b) Twenty-five (25) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least fifty (50) percent but less than ninety-five (95) percent.

(2) The department shall not reimburse for a bed reserve day in a Level I or II PRTF if the Level I or II PRTF's occupancy percent is less than fifty (50) percent.

Section 7. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or

(2) Disapproves the policy.

Section 8. Appeals. A provider may appeal a decision by the department regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 9. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse for Level I and II psychiatric residential treatment facility services in accordance with this administrative regulation if the managed care organization so chooses.

(2) The reimbursement policies established in this administrative regulation shall not apply to a managed care organization, except the requirement that a Level I or II PRTF service shall be in accordance with 907 KAR 9:005 in order to be reimbursable under the Medicaid program.

Section 10. Incorporation by Reference. (1) The "Form CMS 2552-96", August 2010 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. through 4:30 p.m. ["Psychiatric residential treatment facility" (PRTF) means an appropriately licensed PRTF participating in the Medicaid Program.

Section 2. Payment Rates. Covered inpatient psychiatric facility services for individuals under twenty-two (22) years of age provided in PRTFs of sixteen (16) beds or less shall be paid for in accordance with the following:

(1) The PRTFs shall be paid a fixed rate of \$230 per diem which shall be adjusted upward each biennium by 2.22 percent, or usual and customary charge if less; however, the payment shall not exceed prevailing charges in the locality for comparable services provided under comparable circumstances.

(2) The fixed rate, or usual and customary charge if less, covers total facility costs for covered PRTF services, excluding the cost of drugs, as follows:

(a) All care and treatment costs;

(b) Costs for all ancillary services, excluding the cost of drugs which shall be reimbursed through the pharmacy program;

(c) Capital costs; and

(d) Room and board costs.

Section 3. Cost Reports and Audits. PRTFs shall file a cost report annually using a uniform cost report form prescribed by the Department for Medicaid Services. The cabinet may audit the cost reports as it deems necessary.

Section 4. Access to PRTF Fiscal and Services Records. Access shall be granted to PRTF fiscal and services records to the extent determined necessary by the cabinet, as follows:

(1) To assure accuracy of the cost report, that services are provided in accordance with the standards shown in this administrative regulation and in 907 KAR 9:005; and

(2) The PRTF is complying with all terms and conditions of the provider agreement between the cabinet and PRTF.

(3) Representatives of the United States Department of Health and Human Services, Inspector General's Office, and Attorney General's Office shall have access to PRTF records to the extent necessary to perform their functions which relate to the Medicaid Program.

Section 5. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after November 1, 1995.]

LAWRENCE KISSNER, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 9, 2012

FILED WITH LRC: September 4, 2012 at 11 a.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: Jill Hunter or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid reimbursement policies for Level I and Level II psychiatric residential treatment facility services provided to a Medicaid recipient who is not enrolled in a managed care organization; however, a managed care organization shall be authorized to reimburse for Level I and II psychiatric residential treatment facility services in accordance with this administrative regulation if the managed care organization elects to do so.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid reimbursement policies for Level I and II PRTF services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid reimbursement policies for Level I and II PRTF services.

(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 authorizing statutes by establishing Medicaid reimbursement policies for Level I and II PRTF services.

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

(a) How the amendment will change this existing administrative regulation: The amendment replaces the prior single reimbursement model for PRTF services with a per diem reimbursement methodology tailored to Level I and II PRTF services respectively. The Level I PRTF per diem is the lesser of \$274.01/day or the facility's usual and customary charge/day and is to be increased, for inflation, each biennium by 2.22 percent. Level II PRTF reimbursement is tiered with reimbursement increasing as the level of patient care increases. The Level II PRTF per diem rates range from \$345/day to \$405/day and are not adjusted for inflation. The amendment also establishes bed reserve day reimbursement policies.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with legislation (KRS 216B.450 through 457) which created Level I and II psychiatric residential treatment facilities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 216B.450 through 457 by replacing reimbursement for PRTF services with reimbursement for, respectively, Level I and II PRTF services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 216B.450 through 457 by replacing reimbursement for PRTF services with reimbursement for, respectively, Level I and II PRTF services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and Level II psychiatric residential treatment facilities will be affected by the amendment. Level I and II PRTF beds are awarded through a certificate of need process. The Office of Certificate of Need has limited the number of Level I PRTF beds statewide to 315 and the number of Level II PRTF beds to 145 statewide. Of the 315 Level I beds, 303 are currently filled and span thirty-three (33) facilities. Of the 145 Level II PRTF beds, 132 are currently filled and among six (6) facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Level I and II PRTFs will have to contin-

ue to submit cost reports annually to the Department for Medicaid Services (DMS).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Participating Level I and II PRTFs will receive reimbursement tailored to care provided to the individuals they serve.

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

(a) Initially: Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

(b) On a continuing basis: Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

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

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

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

(9) Tiering: Is tiering applied? Tiering is applied as reimbursement for Level I PRTFs is less than reimbursement for Level II PRTFs as individuals served by Level II PRTFs require more intensive care than is required for Level I PRTF service recipients.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(16), 42 U.S.C. 1396d(h), 42 C.F.R. 441.151 and 42 C.F.R. 440.160.

2. State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.

3. Minimum or uniform standards contained in the federal mandate. Per federal Medicaid law, inpatient psychiatric facility services for individuals under twenty-one (21) is not a mandatory Medicaid benefit, but if a state's state plan includes intermediate care facility services for individuals with mental retardation, it must also cover inpatient psychiatric facility services for individuals under twenty—one (21). Additionally, states may be required to provide inpatient psychiatric care under the early and periodic screening, diagnosis and treatment program (EPSDT).

Pursuant to 42 C.F.R. 440.160, "Inpatient psychiatric services for individuals under age 21" means services that—

(a) Are provided under the direction of a physician;

(b) Are provided by—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in §441.151 of this subchapter."

Additionally, 42 C.F.R. 441.151 states, "(a) Inpatient psychiatric services for individuals under age 21 must be:

(1) Provided under the direction of a physician;

(2) Provided by—

(i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.

(3) Provided before the individual reaches age 21, or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—

(i) The date the individual no longer requires the services; or

(ii) The date the individual reaches 22; and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with §441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in §483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 441.151, 42 C.F.R. 440.160, and this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

(d) How much will it cost to administer this program for subsequent years? Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment.

The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(As amended at ARRS, September 17, 2012)

105 KAR 1:400. Federal taxation limitation year.

RELATES TO: KRS 61.645(9)(g)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the ~~[purposes and]~~ provisions of KRS 61.510 to 61.705, ~~16.505[16.510]~~ to 16.652, and 78.510 to 78.852 and to conform to federal statutes and regulations. This administrative regulation concerns the administration of testing contribution and benefit limits in accordance with 26 U.S.C. Section 415.

Section 1. Definitions. (1) "Fiscal year" is defined by KRS 16.505(32), 61.510(19), and 78.510(19).

(2) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).

(3) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

Section 2. The "fiscal year" shall be the limitation year as set out in 26 U.S.C. Section 415 for determining contribution and benefit limits in the plans administered by the Kentucky Retirement Systems.

Section 3. This administrative regulation shall apply to all plans administered by Kentucky Retirement Systems. Subject to the provisions of this administrative regulation, benefits paid from, and employee contributions made to, these plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under 26 U.S.C. 415.

Section 4. Participation in Other Qualified Plans: Aggregation of Limits. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in 26 U.S.C. 414(j) maintained by the member's employer in a KRS plan shall apply as if the total benefits payable under all those defined benefit plans in which the member has been a member were payable from one (1) plan.

Section 5. The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in 26 U.S.C. 414(i) maintained by the member's employer in a KRS plan shall apply as if the total annual additions under all those defined contribution plans in which the member has been a member were payable from one (1) plan.

Section 6. Basic 415(b) Limitation. ~~[Before January 1, 1995, a member shall not receive an annual benefit that exceeds the limits specified in 26 U.S.C. 415(b), subject to the applicable adjustments in that section.]~~ On and after January 1, 1995, a member ~~shall[may]~~ not receive an annual benefit that exceeds the dollar amount specified in 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in 26 U.S.C. 415(b) and subject to any additional limits that are specified in this section. A member's annual benefit payable in any limitation year from a KRS plan shall not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to 26 U.S.C. 415(d) and 26 C.F.R. 1.415(d)-1[the Treasury Regulations under that section].

Section 7. Definition of Annual Benefit. For purposes of 26

U.S.C. 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with 26 C.F.R. 1.415(b)-1(b)(2)[Treasury Regulations].

Section 8. Adjustments to Basic 415(b) Limitation for Form of Benefit. (1) If the benefit under a KRS plan is other than the form specified in Section 6 of this administrative regulation, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in 26 C.F.R. 1.415(b)-1(c)[Treasury Regulations].

(2) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then ~~subsection (1) of this section[the preceding sentence]~~ shall be applied by either reducing the section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii) that takes into account the additional benefits under the form of benefit as follows:

(a) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) does not apply a monthly benefit, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity (if any) payable to the member under the KRS plan commencing at the same annuity starting date as the form of benefit to the member; or

2. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five (5) percent interest assumption (or the applicable statutory interest assumption), and;

a. On or before December 31, 2008, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

b. On or after January 1, 2009, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B), (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing 26 U.S.C. 417(e)(3)(B)); or

(b) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) applies a lump sum benefit, the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the KRS plan for actuarial experience;

2. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption), and;

a. On or before December 31, 2008, the applicable mortality tables[table] for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

b. On or after January 1, 2009, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B) (Notice 2008-85 or any subse-

quent Internal Revenue Service guidance implementing 26 U.S.C. 417(e)(3)(B)); or

3. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(3) (the thirty (30) year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate [the] in effect for the first day of the plan year with a one (1) year stabilization period)); and;

a. On or before December 31, 2008, the applicable mortality tables[rates] for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality[mortality] table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05; ~~or~~.]

b. On or after January 1, 2009, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing 26 U.S.C. 417(e)(3)(B)) divided by 1.05.

Section 9. Benefits Not Taken into Account for 415(b) Limit. (1) For purposes of this administrative regulation, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity and that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under 26 U.S.C. 415(b)(2) and **26 C.F.R. 1.415(b)-1(Treasury Regulations thereunder)** to be taken into account for purposes of the limitation of 26 U.S.C. 415(b)(1).

Section 10. Other Adjustments in 415(b) Limitation. (1) If the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with **26 C.F.R. 1.415(b)-1(d)(regulations issued by the Secretary of the Treasury pursuant to the provisions of 26 U.S.C. 415(b))**, so that the limit (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to a \$160,000 (as adjusted) annual benefit beginning at age sixty-two (62).

(2) If the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in subsection (1) of this section shall not apply.

(3) The reductions provided for in subsection (1) of this section shall not **apply[be applicable]** to preretirement disability benefits or preretirement death benefits.

Section 11. Less than Ten (10) Years of Participation[Service Adjustment for 415(b) Limitations]. The maximum retirement benefits payable to any member who has completed less than ten (10) years of participation in a system[service] shall be the amount determined under Section 6 of this administrative regulation as adjusted under Sections 8 or 10 of this administrative regulation[(2)] multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this section shall not reduce the maximum benefit below ten (10) percent of the limit determined without regard to this section. The reduction provided by this section shall not **apply[be applicable]** to preretirement disability benefits or preretirement death benefits.

Section 12. \$10,000 Limit Less than Ten (10) Years of Service. Notwithstanding anything in this administrative regulation to the contrary, the retirement benefit payable with respect to a member shall be deemed not to exceed the [415(b)]limit set forth in this section if the benefits payable, with respect to the member under a KRS plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed \$10,000 for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified

defined contribution plan in which the member participated. If the member has completed less than ten (10) years of service with the employer, the limit under this section shall be a reduced limit equal to \$10,000 multiplied by a fraction, the numerator of which is the number of years of service the member has and the denominator of which is ten (10).

Section 13. Effect of COLA without a Lump Sum Component on 415(b) Testing. Effective on and after January 1, 2003, for purposes of applying the 415(b) limit to a member with no lump sum benefit, the following **shall[will]** apply:

(1) A member's applicable 415(b) limit **shall[will]** be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments;

(2) To the extent that the member's annual benefit equals or exceeds the Limit, the member **shall not[will no longer]** be eligible for cost of living increases from the funds created by KRS 16.510, 61.515, 78.520, until the time that the benefit plus the accumulated increases are less than the 415(b) limit; and

(3) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable 415(b) limit including any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit under 26 U.S.C. 415(d), and **26 C.F.R. 1.415(b)-1(d). The provisions of this section shall not[the Treasury Regulations thereunder. Nothing in this section shall]** prevent the member receiving benefits from the funds created by KRS 16.568, 61.663, and 78.652.

Section 14. Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit shall be applied taking into consideration cost of living increases as required by 26 U.S.C. 415(b) and **26 C.F.R. 1.415(b)-1[applicable Treasury Regulations]**.

Section 15. 415(c) Limit. After-tax member contributions or other annual additions with respect to a member shall not exceed the lesser of \$40,000 (as adjusted pursuant to 26 U.S.C. 415(d)) or 100 percent of the member's compensation. (1) Annual additions shall mean the sum (for any year) of employer contributions to a defined contribution plan, post-tax member contributions, and forfeitures credited to a member's individual account. Member contributions shall be determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying the 415(c) limits only and for no other purpose, the definition of compensation if applicable shall be compensation actually paid or made available during a limitation year, except as noted **in subsection (3) of this section[below]** and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; except that member contributions picked up under 26 U.S.C. 414(h) shall not be treated as compensation.

(3) Unless another definition of compensation that is permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation, is specified by a KRS plan, compensation shall be defined as wages within the meaning of 26 U.S.C. 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under 26 U.S.C. 6041(d), 6051(a)(3), and 6052 and shall be determined without regard to any rules under 26 U.S.C. 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in 26 U.S.C. 3401(a)(2)).

(a) However, for limitation years beginning on and after January 1, 1998, compensation shall also include amounts that would otherwise be included in compensation but for an election under 26 U.S.C. 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation shall also include any elective amounts that are not includible in the gross income of the employee by reason of 26 U.S.C. 132(f)(4).

(b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensa-

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

tion paid by the later of two and one-half (2 1/2) months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

1. The payment is:

- a. Regular compensation for services during the employee's regular working hours;
- b. Compensation for services outside the employee's regular working hours, such as overtime or shift differential; or
- c. Commissions, bonuses, or other similar payments; and

2. Absent a severance from employment, the ~~payments would have been paid to the~~ employee would have been able to use the payments (including unused accrued bona fide sick, vacation or other leave) if employment had continued.

(c) Any payments not described in paragraph (b) of this subsection shall not be ~~are not~~ considered compensation if paid after severance from employment, even if they are paid within two and one half (2 1/2) months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of 26 U.S.C. 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service. An employee who is in qualified military service (within the meaning of 26 U.S.C. 414(u)(1)) shall be treated as receiving compensation from the employer during the[such] period of qualified military service equal to:

1. ~~(i)~~ The compensation the employee would have received during the[such] period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service; or

2. ~~for (ii)~~ If the compensation the employee would have received during the[such] period was not reasonably certain, the employee's average compensation from the employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(d) ~~(e)~~ Back pay, within the meaning of Treasury Regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

Section 16. Service Purchases Under Section 415(n). (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under a KRS plan, then the requirements of 26 U.S.C. 415(n) shall be treated as met only if:

(a) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all these contributions as an annual benefit for purposes of the 415(b) limit; or

(b) The requirements of 26 U.S.C. 415(c) are met, determined by treating all these contributions as annual additions for purposes of the 415(c) limit. [;]

(2) For purposes of applying this section, a KRS plan shall not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of this section and shall not fail to meet the percentage limitation under 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(3)(a) For purposes of this section the term "permissive service credit" shall mean service credit:

1. Recognized by a KRS plan for purposes of calculating a member's benefit under a KRS plan;

2. Which the member has not received under a KRS plan; and

3. Which the member may receive only by making a voluntary additional contribution, in an amount determined under a KRS plan, which does not exceed the amount necessary to fund the benefit attributable to the service credit. [;]

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the[such] term may include service credit for periods for which there is no

performance of service, and, notwithstanding paragraph (a)2 of this subsection ~~[of this subsection]~~, may include service credited in order to provide an increased benefit for service credit which a member is receiving under a KRS plan.

(4) The KRS plan shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this section; or

(b) Any nonqualified service credit is taken into account under this section before the member has at least five (5) years of participation under a KRS plan.

(5) For purposes of subsection (4) of this section, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" shall mean permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3));

(b) Service as an employee (other than as an employee described in paragraph (a) of this subsection) of an education organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection; or

(d) Military service (other than qualified military service under 26 U.S.C. 414(u)) recognized by the KRS plan.

(6) For ~~in the case of~~ service described in subsection (5)(a), (b), or (c) of this section, the service shall ~~will~~ be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service under more than one plan.

(7) For ~~in the case of~~ a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):

(a) The limitations of subsection (4) shall of this section shall ~~will~~ not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable under federal law to a KRS plan shall apply to these amounts and any benefits attributable to these amounts.

(8) For an eligible member, the 415(c) limit shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a KRS plan as in effect on August 5, 1997. For purposes of this subsection an eligible member shall be an individual who first became a member in a KRS plan before January 1, 1998.

Section 17. Modification of Contributions for 415(c) and 415(n) Purposes. The department may modify a request by a member to make a contribution to a KRS plan if the amount of the contribution would exceed the limits provided in Section 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, Kentucky Retirement Systems may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under 26 U.S.C. 415(c) or 415(n).

(2) If payment pursuant to subsection (1) of this section will not avoid a contribution in excess of the limits imposed by 26 U.S.C. 415(c) or 415(n), Kentucky Retirement Systems may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

Section 18. Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the KRS plan with respect to an amount previously refunded upon a forfeiture of service credit under the KRS plan or another governmental plan maintained by

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

the State or a local government within the state shall not be taken into account for purposes of the 415(b) or (c) limits.

THOMAS ELLIOTT, CHAIR

APPROVED BY AGENCY: May 17, 2012

FILED WITH LRC: May 30, 2012 at 1 p.m.

CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (As amended at ARRS, September 17, 2012)

#### 105 KAR 1:420. 401(h) account established under 26 U.S.C. 401(h).

RELATES TO: KRS 61.701, 61.702, 61.645(9)(g)

STATUTORY AUTHORITY: KRS 61.702, 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852 and to conform to federal statutes and regulations [61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852]. Pursuant to the provisions of KRS 61.702(2)(b)(5)[61.702(b)(5)], as amended by 2008 Extra Sess. Ky. Acts ch. 1, sec. 24[HB 1 of the 2008 Special Session] and of KRS 61.645, this administrative regulation establishes, effective September 1, 2008, a separate 401(h) account under 26 U.S.C. 401(h) within each of the following: the Kentucky Employees Retirement System Trust Fund, the State Police Retirement System Trust Fund, and the County Employees Retirement Trust Fund.

Section 1. Definitions. (1) "Dependent" is defined by the Internal Revenue Code, 26 U.S.C. 152, excluding subsections (b)(1), (b)(2), and (d)(1)(B).

(2) "Medical expense" means expense for medical care as defined by 26 U.S.C. Section 213(e)(1) of the Internal Revenue Code.

(3) "Retired", for purposes of eligibility to receive the medical benefits described in 26 U.S.C. 401(h), means:

(a) An employee is eligible to receive benefits under the Kentucky Retirement Systems;

(b) The employee is not still employed by the employer; and

(c) A separation from employment has occurred.

(4) "Systems" means the retirement systems administered by Kentucky Retirement Systems.

Section 2. The purpose of the 401(h) account established under 26 U.S.C. 401(h) in each of the systems shall be to pay part of the subsidy for health benefits that are otherwise payable from the health insurance fund. The 401(h) account shall be used only to the extent that funds are not available from the health insurance fund.

Section 3. The one (1) percent mandatory contribution established by KRS 61.702(2)(b) shall be deposited in the separate account of each system trust fund, respectively. These contributions are reasonable to pay medical expenses as required by 26 C.F.R. 1.401-14(c)(3).

Section 4. The health benefits shall be subordinate to the retirement benefits provided by the systems. (No life insurance protection is provided by any system.) This requirement shall not be satisfied unless the actual contributions to the 401(h) accounts established under 26 U.S.C. 401(h) do not exceed twenty-five (25) percent of the total actual contributions to the systems (other than contributions to fund past service credits), determined on an aggregate basis since the inception of the 401(h) accounts established under 26 U.S.C. 401(h).

Section 5. Amounts in the 401(h) accounts established under 26 U.S.C. 401(h) shall be for the exclusive purpose of paying medical expenses for retirees, their spouses, and dependents. Amounts in the 401(h) accounts established under 26 U.S.C. shall not be diverted for other purposes.

Section 6. Any amounts in the 401(h) accounts established under 26 U.S.C. 401(h) shall revert to the employers upon satisfaction of all liabilities for medical benefits.

Section 7. Employees shall not have an individual interest in the 401(h) accounts established under 26 U.S.C. 401(h).

Section 8. The 401(h) accounts established under 26 U.S.C. 401(h) may be commingled with the pension assets of the trust funds for investment purposes. Investment earnings shall be credited to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis.

Section 9. Administrative and other expenses shall be charged to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis.

THOMAS ELLIOTT, Chair

APPROVED BY AGENCY: May 17, 2012

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CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (As Amended at ARRS, September 17, 2012)

#### 105 KAR 1:430. General compliance with federal tax laws.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852, 26 U.S.C. 401(a)(7), (8), (25), 414(d),(p),(u), 503(b), Pub.L. 110-245

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852 and to conform to federal statutes and regulations [with federal statute]. This administrative regulation establishes Kentucky Retirement Systems' compliance with 26 U.S.C. 401(a), 26 U.S.C. 414, Pub. L. No. 110-245, and [26 U.S.C. 503(b)] in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefits plans.

Section 1. Compliance with 26 U.S.C. 401(a)(7) and 401(a)(8) for Vesting and Forfeitures. (1) A plan member shall be 100 percent vested in the member's accumulated contributions at all times.

(2) In conformity with 26 U.S.C. 401(a)(8), any forfeitures of benefits by members or former members of the plan shall not be used to pay benefit increases. However, these forfeitures shall be used to reduce employer contributions.

(3) Upon termination or partial termination of an affected retirement system, or the complete discontinuance of contributions, a member shall have a nonforfeitable interest in his accrued benefit to the extent funded except as provided by KRS 16.652, 61.692, and 78.852.

Section 2. Compliance with 26 U.S.C. 414(p) for Qualified Domestic Relations Orders. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in 26 U.S.C. 414(p), then the applicable requirements of 26 U.S.C. 414(p) shall be followed by the retirement system.

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

Section 3. Compliance with 26 U.S.C. 414(u), 26 U.S.C. 401(a)(37), and Pub. L. No. 110-245 for Reemployed Veterans.

(1) Effective December 12, 1994, notwithstanding any other provision of the retirement system law; contributions, benefits, and service credit with respect to qualified military service shall be governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

(2) For deaths occurring on or after January 1, 2007, that occur while a member is performing qualified military service (as defined in 38 U.S.C. 43), to the extent required by 26 U.S.C. 401(a)(37), survivors of a member in a State or local retirement or pension system ~~are~~ are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service shall be counted for vesting purposes.

(3) Beginning January 1, 2009, to the extent required by 26 U.S.C. 414(u)(12), an individual receiving differential wage payments as defined in 26 U.S.C. 3401(h)(2) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under 26 U.S.C. 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Section 4. Compliance with 26 U.S.C. 503(b) for Prohibited Transactions. Effective as of July 1, 1989, the board shall not engage in a transaction prohibited by 26 U.S.C. 503(b).

Section 5. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. Kentucky Retirement Systems shall determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by rule; these benefits shall not be subject to employer discretion.

Section 6. (1) In addition to any other vesting provisions under state law, except as provided in KRS 61.535, the normal retirement benefit of a member with nonhazardous service in the Kentucky Employees Retirement System or the County Employees Retirement System shall be nonforfeitable upon the later of:

(a) The attainment of age ~~sixty-five~~ (65), which is the normal retirement age;

(b) For a member whose membership date is on or before August 31, 2008, the completion of four (4) years of service; or

(c) For a member whose membership date is on or after September 1, 2008, five (5) years of service earned pursuant to KRS 16.543(1), 61.543(1), or 78.615(1).

(2) In addition to any other vesting provisions under state law, except as provided in KRS 61.535, the normal retirement benefit of a member of the State Police Retirement System and a member with hazardous service in the Kentucky Employees Retirement System or the County Employees Retirement System shall be nonforfeitable upon the later of:

(a) For a member whose membership date is on or before August 31, 2008:

1. Attainment of age ~~fifty-five~~ (55), which is the normal retirement age; or

2. The completion of five (5) years of service; ~~or;~~

(b) For a member whose membership date is on or after September 1, 2008:

1. Attainment of age ~~sixty~~ (60), which is the normal retirement age; or

2. The completion of five (5) years of service earned pursuant to KRS 16.543(1), 61.543(1), or 78.615(1).

THOMAS ELLIOTT, Chair

APPROVED BY AGENCY: May 17, 2012

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### KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Board of Emergency Medical Services (As Amended at ARRS, September 17, 2012)

#### 202 KAR 7:601. Training, education, and continuing education.

RELATES TO: KRS ~~271, 311A.050~~, 311A.110, 311A.115, 311A.120, 311A.130, ~~362, 365~~

STATUTORY AUTHORITY: KRS 311A.020, ~~311A.025~~, 311A.030, ~~311A.060~~, 311A.110, 311A.115, 311A.120, 311A.125, 311A.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.110, 311A.115, 311A.120, and 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 ~~requires[relates to the provision of]~~ proper in-service and in-house in-service training and education. **KRS 311A.025 requires the board to establish levels of certification.** This administrative regulation establishes requirements for an organization to be approved by the Board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also **establishes[sets]** standards for the certification and recertification of EMS educators.

Section 1. Education Committee. (1) The board shall create and recognize a standing committee on EMS Education.

(2) The Education Committee shall consist of seven (7) voting members representative of EMS Educators in the state of Kentucky. At least one (1) voting member of the Education Committee shall also be a member of the Kentucky Board of Emergency Medical Services.

(3) ~~A quorum shall be a majority of the seven (7) members of the Education Committee.~~

(4) ~~As a standing committee, the Education Committee shall report directly to the board, with the Chair of the Education Committee tasked to deliver a written as well as verbal report at each regular meeting of the board.~~

(5) ~~The Education Committee shall schedule on an annual basis at least six (6) regular meetings of the committee.~~

(4) ~~Committee.~~

(6) ~~The Chair of the Kentucky Board of EMS shall appoint the membership and the officers of the Education Committee as required under 202 KAR 7:020.~~

(7) ~~The Chair of the Kentucky Board of EMS may also, at his discretion, appoint ex officio members to the Education Committee who shall have no authority to raise issues, move the Committee, or vote upon Motions under consideration.~~

(8) ~~The Director of Education for the Kentucky Board of EMS shall serve as an ex officio member with the purpose and intent to provide guidance and act as a resource to the Education Committee and to the full board.~~

(9) ~~The purpose and charge of the Education Committee shall be to:~~

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

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

(c) Assume the lead role in formulating, drafting, and sending to the board for approval and subsequent promulgation of all administrative regulations that set the standards and requirements for EMS education in Kentucky. ~~[(10) No carried motion of the Education Committee shall be final without motion and positive vote by the board.]~~

Section 2. EMS-TEI Certification. (1) Only an entity certified by the board as an EMS-TEI shall be authorized to conduct training and education programs that lead to certification or licensure by the Kentucky Board of Emergency Medical Services (KBEMS).

(2) An applicant for certification as an EMS-TEI in Kentucky may be certified at the following levels:

(a) EMS-TEI 1, which includes EMR;

(b) EMS-TEI 2, which includes EMR and EMT;

(c) EMS-TEI 3, which includes EMR, EMT, and AEMT;



(d) EMS-TEI 4, which include EMR, EMT, AEMT, and EMT-P; ~~or~~

(e) EMS-TEI CE, which includes continuing education only.

(3) An applicant may seek one ~~(1)~~ or multiple levels of certification ~~at any time~~ during the ~~two (2)~~ ~~five (5)~~ year certification term.

(4) An applicant for ~~a~~~~any~~ level of EMS-TEI certification shall meet all requirements of that level.

(5) An applicant for certification at ~~a~~~~any~~ level of EMS-TEI ~~in Kentucky~~ shall submit a completed Training and Educational Institution (TEI), KBEMS-E14, ~~board-approved initial application~~ with the Kentucky Board of Emergency Medical Services (KBEMS)

(6) An applicant shall submit fees as required by 202 KAR 7:030 with the Training and Education Institution (TEI), KBEMS-E14 ~~board-approved application for certification as an EMS-TEI.~~

Section 3. Initial Certification Requirements for EMS-TEIs. (1) If an applicant is organized as a business entity and is required pursuant to KRS Chapters 271, 362, and 365 ~~required under Kentucky law~~ to file with Kentucky's Secretary of State, the applicant for EMS-TEI certification shall provide proof of registration with the Kentucky Secretary of State that the EMS-TEI is legally able to conduct business in the state.

(2) An applicant shall provide the board with an organizational chart indicating, at a minimum: ~~;~~

(a) The names and addresses of the owner, operator, chief administrative officer, and ~~any~~ other personnel necessary for operation of the entity as an EMS-TEI;

(b) The names and addresses of the EMS-TEI's designated agent for receiving service;

(c) The name and address of the EMS-TEI's medical director; ~~;~~ proof that the medical director is qualified pursuant to ~~under~~ 202 KAR 7:801; ~~;~~ and a document executed between the owner of the EMS-TEI and the medical director outlining the relationship, duties, and requirements of a medical director for an EMS-TEI; and

(d) The name and address of the EMS-TEI's program coordinator.

(3) Beginning January 1, 2013, if the EMS-TEI will be offering courses leading to certification or licensure for EMS personnel in Kentucky that is dependent on EMS-TEI accreditation, the applicant for EMS-TEI shall submit proof of accreditation ~~effective December 31, 2012~~.

Section 4. Certification Periods and Inspections. (1) An EMS-TEI shall display the current certificate issued through the Kentucky Board of Emergency Medical Services in a prominent place in the EMS-TEI's business.

(2) Certification of an EMS-TEI shall be valid for a period of ~~two (2)~~ ~~five (5)~~ years unless ~~except when~~ limited by ~~imposition of~~ disciplinary action.

(3) ~~(2)~~ Prior to expiration of the ~~two (2)~~ ~~five (5)~~ year certification period, an EMS-TEI may apply for recertification for a subsequent ~~two (2)~~ ~~five (5)~~ year period.

(4) ~~(3)~~ Upon application for recertification, an applicant shall resubmit an Training and Educational Institution (TEI), KBEMS-E14 ~~application form and all documents required by the board.~~

(5) ~~(4)~~ An EMS-TEI seeking recertification shall pay all applicable fees upon ~~at the time of~~ application. Failure to pay fees or subsequent rejection of ~~a~~~~any~~ payment method shall result in denial of the Training and Educational Institution (TEI), KBEMS-E14 ~~EMS-TEI application.~~

(6) ~~(5)~~ A newly certified EMS-TEI shall undergo an inspection prior to offering the EMS-TEI's first class. Failure to submit to the inspection shall result in immediate revocation of the certification ~~application.~~

(7) ~~(6)~~ Each inspection ~~inspections~~ shall ensure that the EMS-TEI has met all applicable requirements in Section 5 of this administrative regulation. If the board's inspection finds that the EMS-TEI has failed to meet ~~a~~~~any~~ requirement, the EMS-TEI shall correct all deficiencies prior to offering a class ~~any classes.~~

(8) ~~(7)~~ The board shall inspect an EMS-TEI upon submis-

sion of the EMS-TEI's ~~when the EMS-TEI submits~~ notice of intent to upgrade the level of courses offered.

(9) ~~(8)~~ The board may inspect an EMS-TEI upon submission of the Training and Educational Institution (TEI), KBEMS-E14 ~~application~~ to renew certification as an EMS-TEI.

(10) ~~(9)~~ The board shall conduct the inspection of an EMS-TEI no more than ninety (90) days following KBEMS' receipt of notice of intent to upgrade.

(11) ~~(10)~~ Approval of notice of intent to upgrade shall not extend the ~~two (2)~~ ~~five (5)~~ year EMS-TEI certification period.

Section 5. EMS-TEI Operating Requirements. (1) Each EMS-TEI ~~EMS-TEIs~~ shall maintain files for a period of seven (7) years beyond the end date of each EMS Course program that contain the following documentation:

(a) For courses requiring accreditation, all documents necessary for the EMS-TEI to have met the accrediting agency's standards, policies, and guidelines as approved by the board;

(b) The student attendance sign-in sheets for each course taught, including:

1. Lectures;
2. Practical skills lessons; and
3. Clinical and field rotations; ~~;~~

(c) A master copy of each set of written examinations administered and answer keys for the exams;

(d) A master copy of practical skills examination forms;

(e) A master copy of each course syllabus;

(f) Current, written affiliation agreements executed between hospitals or EMS agencies and the EMS-TEI;

(g) Health records for students as may be required by the EMS-TEI or as expressly required in written affiliation agreements and determined necessary for students to complete clinical assignments, field-internships, or summative field evaluations;

(h) Records of all disciplinary actions taken against a student, if applicable. ~~any student;~~ Records shall include notification to students of the complaint; responses, if applicable, ~~any responses~~ made by or on behalf of the student; ~~;~~ and actions taken as a result of a complaint or other documented incident, grievance, or deficiency;

(i) For students requiring remediation, documentation of specific activities or procedures requiring remediation and actions taken in response to deficiencies, including how the specific remediation was accomplished and if the success or failure of remediation;

(j) A master file of the objectives and competencies to be achieved by students during each educational program; and

(k) Documentation of another requirement ~~any other requirements~~ that the EMS-TEI has established as part of the offered courses.

(2) Failure of an EMS-TEI to maintain records required by the board shall ~~may~~ result in disciplinary action against an EMS-TEI.

(3) KBEMS shall ~~may~~ require an EMS-TEI to submit a copy of the EMS-TEI's annual accreditation report if ~~when~~ accreditation is necessary for licensure or certification of the students taking the EMS-TEI's offered course ~~courses.~~

(4) EMS-TEIs shall conduct an annual review and revision of all courses and programs to ensure the EMS-TEI has complied with necessary updates to courses, programs, and accepted educational standards.

(5) An EMS-TEI shall document in writing the required annual review and ~~any~~ updates resulting from the annual assessment.

(6) Documentation of the annual review shall be in writing, signed by the owner or program coordinator, and maintained in the course or program file.

(7) An EMS-TEI shall assure that all physical resources required by the curriculum, including classrooms, skill practice areas, notices ~~notice~~ of where to purchase or access textbooks, instructional aides, equipment, and supplies shall be ~~are~~

(a) Available at each class session where skills are taught or practiced;

(b) Adequate in number to allow for practice by students enrolled; and

(c) In good working order and well-maintained.

(8) ~~(6)~~ An EMS-TEI shall maintain and protect the privacy of all records pertaining to the health and safety of patients, students,

and faculty members that are obtained or developed through or as a result of participation in training and educational activities with the EMS-TEIs.

(9) [(7)] The EMS-TEI shall be [is] responsible for knowing and following all federal and state laws and requirements established in 202 KAR Chapter 7 relevant to safeguarding privacy of records, including educational and health records.

(10) [(8)] The EMS-TEI shall develop and make available to all prospective students a clearly-defined admissions policy and procedure.

(11) [(9)] An EMS-TEI's admission policy shall include specific requirements for students to gain admission, maintain enrollment, and all academic requirements necessary to successfully complete the offered course or program. Admissions policies and procedures shall include at a minimum:

(a) Tuition rates and [any] fees associated with the training and education program;

(b) Fees and other costs associated with remediation;

(c) A descriptive synopsis of the curriculum for each type of course taught;

(d) Course educational objectives;

(e) Classroom lecture and skills practice schedules;

(f) Clinical or field rotation locations with tentative beginning and ending dates;

(g) Participation requirements for each clinical or field rotation site; and

(h) Citations to and language of prohibited actions pursuant to/under KRS Chapter 311A.050 that provide grounds for sanctions against or denial of individuals making application for certification or licensure by the board.

(12) [(10)] EMS-TEIs shall establish written policies that provide for:

(a) The creation and use of course or program advertising that accurately portrays the course or program content as offered by the EMS-TEI;

(b) A uniform process for filing, investigating, and resolving complaints or grievances by applicants, students, preceptor sites, patients, members of the general public, or faculty members;

(c) A procedure for a student/students to withdraw from a course and a clear statement/courses, and clear statements of refund policies and the steps necessary for a student to obtain a refund/students to obtain refunds of tuition or fees already paid;

(d) Faculty to develop examinations for each course offered; and

(e) The establishment of and adherence to examination procedures and policies;

(f) The requirements for a student/students to take and pass examinations in courses the EMS-TEI offers; and

(g) Notification to all students and prospective students of their right to ask for and obtain the pass – fail/pass/fail rates of past students who have taken the National Registry Exam or other board approved certification test. The pass – fail/pass/fail rate shall be calculated for courses given within the last two (2) years.

(13) [(11)] An EMS-TEI shall assure each student, while participating in a clinical or field rotation, is clearly identified as a student and by first and last name. Identification shall be accomplished by use of:

(a) A nameplate;

(b) A uniform; or

(c) Other publicly apparent means.

(14) [(12)] EMS-TEIs shall include a chief administrative officer (CAO) or designee who shall:

(a) Administer and oversee the EMS-TEI;

(b) Assure the quality and credentials of the program coordinator, EMS educators, EMS educator adjuncts, and students accepted into [any of] the EMS-TEI's programs or courses;

(c) Assure the security of examination results and materials;

(d) Monitor the activities of the EMS-TEI's faculty and students; and

(e) Maintain records and documents and submit reports.

(15) If/as required by the board, (13) When applicable, an EMS-TEI shall have a Paramedic Course Coordinator for paramedic training and education courses. The Paramedic Course Coordi-

nator shall maintain a Level III EMS Educator status in the Commonwealth of Kentucky.

(16) [(14)] A certified EMS-TEI shall maintain an ongoing level of competence, evidenced by a minimum pass rate of thirty (30) percent based upon a measurement of students who have taken the board-approved/board approved exam for the first time within the twenty-four (24) months immediately preceding the EMS-TEI's renewal date.

(17) [(15)] An EMS-TEI's competency shall also be demonstrated by compliance with KRS Chapter 311A and 202 KAR Chapter 7/statutory and regulatory requirements, adherence to established educational standards, and the EMS-TEI's process for remediating students who take but fail to pass the board-approved test.

(18) If/board's approved test, (16) When an EMS-TEI fails to meet an ongoing level of competence determined according to this section, the EMS-TEI shall be subject to a plan of correction mediated through the office of the board.

(19) [(17)] An EMS-TEI that cannot maintain an ongoing level of competence may be subject to discipline pursuant to KRS 311A.

Section 6. Disciplinary Action Against an EMS-TEI. (1) As certified entities under the board's jurisdiction, all EMS-TEIs shall be subject to the disciplinary procedures and sanctions established in KRS 311A.

(2) Discipline off/against an EMS-TEI as a certified entity shall/does not prevent the board from taking disciplinary action against a certified or licensed individual/individuals associated with the EMS-TEI at any level of certification or licensure applicable.

Section 7. Reporting Requirements for EMS-TEI. (1) An EMS-TEI shall submit to KBEMS the documents required by subsection (2) of this section/required documents for all EMS courses that lead to licensure or certification by the board.

(2) An EMS-TEI shall submit the following documents to the board office:

(a) Course Notification form; and

(b) Educational Institution Course Roster[A list of documents required in this section shall be made available to EMS-TEIs on the board's Web site].

(3) Upon submission of all documents required by subsection (2) of this section/required documents for courses that lead to licensure or certification, the office of the board shall assign a number or other identifier to the course.

(4) An EMS-TEI shall notify the board office thirty (30) days prior to the start of a/[any] course. Failure to notify KBEMS shall violate this section of this administrative regulation and may subject the EMS-TEI to disciplinary action under KRS 311A.

(5) A class shall not commence until/No class shall commence unless the EMS-TEI has obtained/obtain an identification code and notified the board as required in this section.

(6) A/[Any] course that does not meet all requirements of this administrative regulation shall not lead to certification or licensure for the EMS students enrolled in the course.

Section 8. Requirements For All Training and Education Courses. (1) All EMS training and education courses that lead to certification or licensure by KBEMS shall:

(a) Comply with this administrative regulation/Be approved by board established procedures;

(b) Not commence until the EMS-TEI has filed all documents required pursuant to Section 7(2)/under those procedures, including course notification and other documents required under Section 7 of this administrative regulation;

(c) Not begin until the EMS-TEI has paid all fees required pursuant to/under 202 KAR 7:030;

(d) Use the National Emergency Medical Services Education Standards – Instructional Guidelines/Education Guidelines current at the time the course is offered;

(e) Teach students the EMS Scope of Practice Model/board approved Scope of Practice;

(f) Reflect EMS-TEI compliance with any changes to the National Education Guidelines or Scope of Practice no later

than one (1) year following the change: EMS-TEIs are presumed to know the changes and may be subject to disciplinary action if not in compliance within one (1) year of any change;

(g)] Meet the course administrative and faculty requirements in this administrative regulation and as established by the board approved accrediting agency; and

(a)](th)] Use lead instructors certified by KBEMS as EMS educators who are minimally certified or licensed at the level of the offered course.

(2) The EMS-TEI may use adjunct faculty for initial certification or licensure courses if the adjunct faculty: [who]

(a) Meets[Meet] one (1) of the requirements established in[ef] Section 13 of this administrative regulation; and

(b) Teach for no more than five (5) percent of the classroom education time for each EMS course without the supervision of the program coordinator or certified instructor present and available in the classroom.

(3) The EMS-TEI shall have additional skills educators for classroom sessions where skills are practiced. These sessions shall not proceed without the presence of:

(a) A certified educator for the first ten (10) students; and

(b) An additional educator or adjunct faculty for each one (1) to ten (10) additional students. Additional adjunct faculty used shall not be required to be certified as an EMS educator but shall be certified by the board as an EMS provider at or above the level for the course being taught and shall meet at least one (1) requirement established in[ef] Section 13 of this administrative regulation. [i]

(4) The EMS-TEI shall have a medical director qualified pursuant to 202 KAR 7:801, who shall: [who]

(a) Be[is] employed by or under written contract with the EMS-TEI to serve as the medical director of the program;

(b) Be[is] routinely available to the EMS-TEI to provide consultation regarding issues related to the training and education program;

(c) Participate[Participates] in the approval of the didactic clinical and evaluation material and student progress review;

(d) Meets the accrediting agency standards, policies and guidelines; [as approved by the KBEMS; and]

(e) Provide[Provides] medical consultation and guidance to the course faculty; and

(f) Certifies the skills of all of the EMS-TEI's students who are enrolled in courses leading to certification or licensure.

(5) An EMS-TEI shall maintain a written contractual affiliation agreement or memorandum of agreement with each clinical rotation site that outlines, at a minimum, the responsibilities of each entity and reporting requirements for students involved in clinical and field training and education.

(6) An EMS-TEI shall provide faculty from the EMS-TEI training and education program, clinical coordinators, or designees under contract with the EMS-TEI to oversee student activity while in the clinical setting.

Section 9. Emergency Medical Responder Training and Education Course Requirements. [(1)] Each Emergency Medical Responder (EMR) training and education course shall follow:

[(1)]:

(a) Follow] All training and education requirements established in KRS Chapter[under KRS] 311A and 202 KAR 7:201; and

(2) The National Emergency Medical Services Education Standards – Instructional Guidelines[(b) Follow the current national education standards] for duration of course and individual class segments.

Section 10. Emergency Medical Technician Training and Education Course Requirements. (1) Each Emergency Medical Technician (EMT) training and education course shall:

(a) Include all training and education requirements established in KRS Chapter[under KRS] 311A and 202 KAR 7:301; and

(b) The National Emergency Medical Services Education Standards – Instructional Guidelines[Follow the current na-

tional education standards] for duration of course and individual class segments.

(2) To be eligible for certification as EMTs, each student[students] shall complete a clinical or field rotation that meets the requirements for EMT education as determined by this administrative regulation and the EMS[National Medical Standards] Scope of Practice for an EMT student as approved by the accrediting agency's minimum requirements.

(3) The minimum requirements of clinical or field rotations for EMTs shall include minimally:

(a) A clinical or field rotation consisting of at least twenty-four (24) hours conducted in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed ambulance service, or other health care facility;

(b) Interviews and assessments of a minimum of ten (10) patients with at least five (5) interviews and assessments conducted in a pre-hospital ambulance service setting; and

(c) Recording patient history and completing assessment on a prehospital care report form for each of the ten (10) patients required in paragraph (b) of this subsection[(2)(b) of this section].

(4) If a student fails to achieve a[any] goal established for the EMT education program, the EMS-TEI CAO Officer or program director shall[may] require the student to repeat the failed[any] portion of a clinical or field rotation experience.

(5) If[When] a student is required to repeat a[any] portion of a clinical or field rotation experience, the CAO or program director shall have a written procedure for remediation that ensures the student shall be[is] provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues; and

(c) A right for the student to appeal the decision of the EMS-TEI about the allegations or academic issues.

(6) If[When] additional time is required, the notification to the student shall be signed and dated by the student.

Section 11. Advanced-Emergency Medical Technician Training and Education Programs. (1) Advanced-Emergency Medical Technician (A-EMT) training and education course requirements. Each A-EMT training and education course shall:

(a) Include all training and education as required pursuant to KRS Chapter 311A; and[under KRS 311A:]

(b) Follow the National Emergency Medical Services Education Standards – Instructional Guidelines[current national education standards].

(2) To be eligible for certification as A-EMTs, a student[students] shall complete a clinical or field rotation that meets the requirements for A-EMT education as determined by this administrative regulation and the EMS[National Medical Standards] Scope of Practice for an A-EMT [as approved by the board or the appropriate accrediting agency].

(3) The minimum requirements of clinical and field rotations for A-EMTs shall include:

(a) Clinicals or field rotations that occur in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed advanced life support ambulance service, or other advanced health care facility;

(b) Interviews and assessments of a minimum of thirty-five (35) patients, including at least fifteen (15) interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a prehospital care report form for each of the thirty-five (35) patients required in paragraph (b) of this subsection[(2)(b) of this section].

(4) If a student fails to achieve a[any] goal established for the A-EMT education program, the EMS-TEI chief administrative officer or program director shall[may] require the student to repeat the failed[any] portion of a clinical or field rotation experience.

(5) If[When] a student is required to repeat a[any] portion of a clinical or field rotation experience, the CAO or program director shall have a written procedure for remediation that ensures the student shall be[is] provided with adequate due process protec-

tions that include at a minimum:

- (a) Notification of allegations or academic issues;
- (b) A right for the student to be heard on the subject of the allegations or academic issues; and
- (c) A right for the student to appeal the decision of the EMS-TEI about the allegations or academic issues.
- (6) If/When the EMS-TEI requires the student to complete additional ride-time, the EMS-TEI shall give the student written notification for the student to sign and date.

Section 12. Paramedic Training and Education Programs. Paramedic training and education course requirements. (1) Each Paramedic training and education course shall:

- (a) Include all training and education as required by this administrative regulation, KRS Chapter 311A, and any other Kentucky statutes that place mandates upon paramedic students; and
- (b) The National Emergency Medical Services Education Standards – Instructional Guidelines/Follow the current national education standards].
- (2) To be eligible for licensure as a paramedic, a student shall complete a clinical or field rotation that meets the requirements for paramedic education as determined by this administrative regulation and the EMS[National Medical Standards] Scope of Practice for a Paramedic[as approved by the accrediting agency's minimum requirements].

(3) The minimum requirements of clinical or field rotations for paramedics shall include:

- (a) Clinicals or field rotations that shall be/are conducted in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed advanced life support ambulance service, or other advanced health care facility/facilities];
- (b) Interviews and assessments of a minimum of seventy-five (75) patients, including at least fifty (50) interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and
- (c) Record of patient history and assessment on a prehospital care report form for each of the seventy-five (75) patients required in subsection (3)(b) of this section.

(4) If a student fails to achieve a[any] goal established for the EMS education program, the EMS-TEI chief administrative officer or program director shall/may require the student to repeat the failed[any] portion of a clinical or field rotation experience.

(5) If/When a student is required to repeat a[any] portion of a clinical or field rotation experience, the CAO or program director shall have a written procedure for remediation that ensures the student shall be/is provided with adequate due process protections that include at a minimum:

- (a) Notification of allegations or academic issues;
- (b) A right for the student to be heard on the subject of the allegations or academic issues; and
- (c) A right for the student to appeal the decision of the EMS-TEI about the allegations or academic issues.
- (6) If/When additional time is required to be completed for remediation, the EMS-TEI shall provide written notification of the additional time required and shall obtain a dated signature from the student.

Section 13. Continuing Education. (1) Training and education courses provided to individuals outside the roster of a licensed service and that fulfill the continuing education requirements necessary to recertify or renew a certification or licensure shall be provided by:

- (a) An entity certified by KBEMS as an EMS-TEI;
- (b) An agency or department having contractual agreements with a KBEMS certified EMS-TEI that is in good standing and not subject to disciplinary action;
- (c) A[Any] KBEMS approved symposia, state, national, or international school;
- (d) A KBEMS approved or nationally accredited on-line or distance education provider but which shall not provide more than fifty (50) percent of the total continuing education hours to fulfill the CE requirements for renewal pursuant to KRS Chapter 311A or 202 KAR Chapter 7[under KRS Chapter 311A or any administrative

regulation promulgated by the board]; or

- (e) A[Any] course that has been accredited by the board-approved/board approved accrediting agency for continuing education.
- (2) Continuing education courses[offerings] shall:
  - (a) Contain material relevant to the job specifications and professional development of EMS personnel; and
  - (b) Be conducted at an EMS level appropriate for the discipline of the participants.

Section 14. Continuing Education Instructor Requirements. (1) The following persons shall be qualified to conduct continuing education courses for persons certified or licensed by KBEMS:

- (a) A paramedic licensed by the board or licensed or certified in another state;
- (b) A physician licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;
- (c) A registered nurse licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;
- (d) An EMS Educator certified in Kentucky; or
- (e) An individual who is at least one (1) of the following:

1. Certified by a state or federal agency to teach or perform subject matter relevant to the National Emergency Medical Services Education Standards-Instructional Guidelines and[National] EMS Scope of Practice for a prehospital discipline;

2. Certified by a nationally-recognized entity to provide EMS related training and education;

3. A presenter at a National or State Symposium accredited by an agency or other KBEMS approved entity; or

4. A presenter approved by an EMS medical director as uniquely qualified by experience or education; or

5. A presenter approved as being uniquely qualified by an emergency response agency's chief administrative officer.

(2) The EMS-TEI or other approved contractual department or agency[departments or agencies] providing continuing education shall be required to:

(a) Maintain a roster, objectives, and outline for every continuing education course taught on file for a period of seven (7) years beyond the end date of each EMS Course; and

(b) Maintain all documentation to have met the accreditation agency standards, policies, and guidelines established in this administrative regulation[and guidelines approved by KBEMS].

(3) If requested by the board, the EMS-TEI shall/The EMS-TEI may be required to submit to KBEMS the required documents for EMS continuing education courses taught within the preceding seven (7) years that lead to re-certification or relicensure by the KBEMS, including:

- (a) Contractual agreements;
- (b) The continuing education educator's curriculum vitae;
- (c) A completed Educational Institution[Student] Course Roster[?]; and
- (d) Objectives and outline for each continuing education course.

Section 15. Pilot Programs. (1) A licensed EMS provider agency may apply to KBEMS for authorization to perform a pilot program.

(2) A pilot program shall involve/involves specialized training and education as well as associated procedures not otherwise provided for in 202 KAR Chapter 7[administrative regulations].

(3) A[Any] licensed EMS provider agency seeking authorization for a pilot program shall submit a written request to the board.

(4)[The request shall not be approved unless the applicant agency completes all parts of the pilot program packet provided by the office of the board,

(5)] An authorized entity approved by the board to conduct a pilot program shall agree in writing:

(a) To submit periodic reports related to the progress of the pilot program; and

(b) To abide by the board-established/board established requirements for the pilot program.

(5)[6] An individual otherwise certified or licensed by the board who successfully completes an approved pilot program

shall[may] perform the procedures relevant to the training and education received in the pilot program subject to protocols established by the medical director for the pilot program.

(6)[(7)] The board may establish pilot program limitations on:

(a) The geographic area or service location where the procedure may be performed; and

(b) The performance of the procedure subject to a:

1. [a] Specific and defined event;

2. [a] Disaster; or

3. [a] Designated directive.

(7)[(8)] The board may authorize the use of physicians or other medical professionals to supervise and monitor the training and education of students involved in a pilot program.

(8)[(9)] The board may restrict or limit actions that involve the performance of an invasive procedure or the administration of medication subject to:

(a) Required physician or medical director oversight; or

(b) The use of protocols that have been submitted to the board for review and approved by the state medical advisor and the board.

Section 16. EMS Educators. (1) An EMS Educator may be certified at the following levels:

(a) Level I – EMR Educator, which certifies[qualifies] the individual to teach EMR courses or EMR continuing education;

(b) Level II – EMT Educator, which certifies the individual to teach EMT and EMR courses or EMT and EMR continuing education; or

(c) Level III – Advanced Educator, which certifies the individual to teach EMR, EMT, A-EMT, and paramedic courses or continuing education.

(d) Level IIIR - Registered nurses and physicians who are not currently certified as an EMT, A-EMT, or paramedic shall[may] only be certified as Level III instructors who teach A-EMTs or paramedics.

(2) Depending on the level of certification sought, a[An] applicant for certification as a Kentucky EMS educator shall:

(a) Already hold a certificate or license in Kentucky as an Emergency Medical Responder (EMR), an Emergency Medical Technician (EMT), an Advanced Emergency Medical Technician (A-EMT), or a paramedic;

(b) Not be issued a certificate as an EMS educator for a level of instruction higher than their EMS provider certification or license;

(c) Have successfully completed:;

1. The National Association of EMS Educators Emergency Medical Services Education Standards – Instructional[National] Guidelines for educating EMS educators course;

2. A KBEMS-approved[KBEMS-approved] EMS educator course that meets the objectives of the National Highway Traffic Safety Administration (NHTSA) and is designed to represent a common core for teaching knowledge and skills to assist the education of adult learners; or

3. A Bachelor's Degree or higher in education;

(d) Have been certified or licensed for a minimum of four (4) years as an EMS provider at the same level or at a higher level for which the applicant seeks to become an EMS educator;

(e) Provide documentation that two (2) years of the four (4) years' experience required in this section is experience providing care with an EMS organization that complies with the requirements of KRS Chapter 311A or 202 KAR Chapter 7. [1- An ambulance service;

2- A medical first response agency such as a fire department or rescue squad;

3- A hospital emergency department or urgent care facility;

4- An industrial emergency response team or service in an industrial first-aid station; or

5- Another environment determined by the KBEMS to have met this requirement;]

(f) Provide documentation the applicant has assisted with a course that meets the following requirements:

1. The board has approved the course as leading to certification or licensure;

2. Assistance with the course has been under the supervision

of a certified EMS educator who attests using the board-approved Certified Educator form that the educator has served as a course coordinator or lead educator for at least three (3) separate courses and who has not been subject to disciplinary action or reprimand by the board pursuant to KRS Chapter[under KRS] 311A within the past thirty-six (36) months; and

3. The course in which the applicant will assist is at the same level of EMS educator the applicant is seeking;;

(g) Provide evidence of completion of a board sponsored [curriculum] orientation program;

(h) Submit a completed EMS Responder Application["Application for EMS Educator Initial Certification"] and pay all established[required] fees;

(3)[(f)] If applying to become a Level I or II Educator:

(a)[the applicant shall

1.] Be certified minimally as an EMT to teach EMTs or EMRs and minimally certified as an EMR to teach only EMRs;

(b)[2.] Submit documented proof that the applicant:

1.a. The applicant] Completed a minimum of five (5) presentations meeting the objectives of the[current] National Emergency Medical Services Education Standards-Instructional Guidelines and EMS[National] Scope of Practice Model National education for EMT or EMR as applicable for level of certification;

2.b. The applicant] Demonstrated skills from at least five (5) subjects meeting the objectives of the[current] National Emergency Medical Services Education Standards-Instructional Guidelines and EMS[National] Scope of Practice Model National education for EMT EMT or EMR as applicable for level of certification;

3.c. The applicant] Completed all presentations and all skills demonstrations on different topics for a total of ten (10) separate topics; and

4.d. The applicant] Attended a minimum of fifty (50) percent of clock hours of the course; and

(4)[(f)] If applying to become a Level III Educator:

(a)[the applicant shall

1.] Be certified as a paramedic or higher; and

(b)[2.] Present documented proof of instruction in a minimum of fifty (50) classroom clock hours in a minimum of five (5) different subject areas that[which] shall include instruction in pharmacology, cardiac emergencies, and traumatic injuries, meeting the objectives of the[current] National Emergency Medical Services Education Standards-Instructional Guidelines and EMS[National] Scope of Practice Model for paramedic education.

(5)[(6)] The expiration date of an EMS educator certification shall correspond to those established in KRS Chapter[set in KRS] 311A and 202 KAR Chapter 7.

(6) Documented proof of the educator's experience shall be submitted on the Educator Practical Requirements form[any other administrative regulation relevant to the certification period].

Section 17. Renewal of EMS Educator Certification. (1) An EMS educator shall be eligible to renew the EMS educator certification if the applicant for renewal:

(a) Has maintained state certification or licensure as a provider at a level equal to or greater than the level at which they are certified as an EMS educator;

(b) Has submitted to the board written evidence of completion of all training and education as required by KRS Chapter 311A;

(c) During the preceding two (2) years, has been actively engaged in instruction and obtained a minimum of fifty-two (52) contact hours that include at least eight (8) hours contact hours on topics related to methods of instruction (MOI). The eight (8) relevant to MOI;

1. May include a board-approved[any board-approved] and required educator update[updates]; and

2. [Shall be certified in writing by] The chief administrative officer of the EMS-TEI employing the instructor shall provide proof of the courses or contact hours if requested to do so in an audit by the board;

(d) Is not subject to discipline pursuant to KRS Chapter[under KRS] 311A;

(e) Has paid fees[any fee] required by 202 KAR 7:030; and

(f) Has submitted to the board a completed and signed EMS

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

### Responder Application[application for EMS educator renewal]

(2) The EMS educator shall maintain all training and education documentation outlined in this administrative regulation for four (4) years from the date of completion.

(3) The KBEMS office may audit an EMS educator's continuing education and continuing education records.

Section 18. EMS Educator reinstatement. (1) An EMS Educator whose certification has lapsed for a period not exceeding five (5) years may reinstate his certificate. To reinstate a certificate, the EMS educator shall submit:[by submitting]

(a) A completed EMS Responder Application[Educator application];

(b) Evidence of at least sixteen (16) hours of training in methodology of instruction (MOI);

(c) Written evidence of completion of a board-sponsored[board sponsored] EMS Educator orientation course; and

(d) Payment of the reinstatement fee as established[set forth] in 202 KAR 7:030.

(2)[An applicant for reinstatement shall not be subject to disciplinary action under KRS 311A.]

(3) An EMS Educator whose certification has lapsed for a period exceeding five (5) years shall seek certification as an initial applicant.

Section 19. Transition for Currently Certified Educators. An educator certified after October 2012[Currently-certified educators. (1) Educators certified on the effective date of this administrative regulation] shall be transitioned as follows:

(1)[(a)] Level I EMS instructors shall be certified as Level I educators;

(2)[(b)] Level II Instructors shall be certified as Level II Educators;

(3)[(c)] Currently certified Level III Instructors shall be certified as Level III educators;

(4)[(d)] Level I and Level II shall be certified as Level I and Level II educators; and

(5)[(e)] Level III instructors currently licensed as paramedics shall be certified as Level I, Level II, and Level III educators; and

(6)[(f)] Level III instructors currently licensed as RNs or physicians shall be certified as Level III educators.

Section 20. EMS Educator Reciprocity. [(1)] A person certified as an EMS instructor in another state or US territory shall be eligible for Kentucky EMS instructor certification upon demonstrating:

(1)[(a)] Evidence of certification or licensure as an EMS provider for a minimum of four (4) years at the same level or at a higher level for which they are applying to be a Kentucky EMS educator;

(2)[(b)] Proof of four (4) years' educational experience in another state or territory;

(3)[(c)] Submission of a completed EMS Responder Application;

(4)[Educator application;

(d)] Evidence of at least[board approved] sixteen (16) board-approved hours of training in methodology of instruction (MOI);

(5)[(e)] Written evidence of completion of a board-sponsored[board sponsored] EMS Educator orientation course; and

(6)[(f)] Payment of the educator fee as established[set forth] in 202 KAR 7:030. [(2) An applicant for reinstatement shall not be subject to disciplinary action under KRS 311A.]

Section 21. EMS Educator Temporary Certification. (1) An EMS educator applicant holding EMS educator certification or licensure from another state or US territory may be granted a temporary certification in Kentucky upon submission of the EMS Responder[educator] Application.

(2) A temporary card shall not[No temporary card shall] be valid for more than one (1) year.

(3) At the end of one (1) year, an applicant for reciprocity who has[have] not completed the requirements estab-

lished[appearing] in Section 18 of this administrative regulation shall not be eligible for an extension or renewal of the temporary certification period.

(4) An Applicant failing to meet the time limit for obtaining certification through reciprocity shall seek certification as a Kentucky EMS Educator by completing all requirements for initial certification. [(5) No applicant for temporary certification shall be subject to disciplinary action under KRS 311A.]

Section 22. EMS Evaluator. (1) An applicant for certification as an EMS evaluator shall:

(a) 1. Be currently certified as a Level I, Level II, or Level III EMS educator; or

2.[(b)] Hold current unrestricted licensure in a[any] state as a physician;

(b)[and(e)] Have completed a board-approved evaluator training program;

(c)[(d)] Have a minimum of two (2) years' patient care experience prior to serving as an evaluator;

(d)[(e)] Submit a completed EMS Responder Application; and ["Application for EMS Evaluator"];

(e)[(f)] Have paid all fees required by 202 KAR 7:030 for approved by the board; and

(g) Not be subject to discipline pursuant to KRS 311A.]

(2) The certification period of an EMS evaluator shall be contemporaneous with the expiration date of a certificate or license issued by the board, the KBN or KBML, or the state that issues his or her license[their licenses].

(3) An EMS evaluator shall be certified as:

(a) Level I, which qualifies the evaluator to assess EMR candidates for certification;

(b) Level II, which certifies the evaluator to assess EMT and EMR candidates for certification; or

(c) Level III, which certifies the individual to evaluate paramedic, EMT, AEMT, and EMR candidates for certification or licensure. A licensed physician or registered nurse who is[are] not also a licensed or certified EMS provider shall[providers may] evaluate paramedics only. A person certified as an A-EMT may[Persons certified as A-EMTs are allowed to] evaluate A-EMTs, EMTs, and EMRs.

(4) An Individual shall not be endorsed as an EMS evaluator at a[any] level greater than the level at which certified or licensed as an EMS educator[EMS educators].

Section 23. Renewal of EMS Evaluator Endorsement. [(1)] A person who holds an endorsement as an EMS evaluator shall be eligible to renew the EMS evaluator endorsement if the individual:

(1)[(a)] Maintains current state certification or licensure as a provider;

(2)[(b)] During the certification period, participates in a minimum of two (2) separate evaluations on two (2) separate dates or attends a board-sponsored[board sponsored] evaluator class;

(3)[(c)] Is not subject to discipline pursuant to KRS Chapter 311A;

(4)[(d)] Submits to the board a completed EMS Responder Application[Application for Renewal of EMS Evaluator Endorsement]; and

(5)[(e)] Pays all fees required by 202 KAR 7:030 for approved by the board].

Section 24. Educator and Evaluator Oversight. [(1)] KBEMS may conduct scheduled or, if part of an official investigation, unscheduled visits to an EMS educator's classroom or to an EMS evaluation site to verify compliance with KRS Chapter 311A and 202 KAR Chapter 7[the administrative regulations], instructional quality, and evaluative standards required in this administrative regulation.

Section 25. Incorporation by reference. (1) The following material is incorporated by reference:

(a) "Training and Educational Institution (TEI)", KBEMS-E14, July 2012;

(b) "Course Notification", KBEMS-E22, September 2012;

(c) "Educational Institution Course Roster", KBEMS-E23,

**September 2012:**

**(d) "National Emergency Medical Services Education Standards – Instructional Guidelines", National Highway Traffic Association, DOT HS 811 077A, January 2009;**

**(e) "EMS Scope of Practice Model", National Highway Traffic Association, DOT HS 810 657, February 2007;**

**(f) "EMS Responder Application", KBEMS-E1, September 2012;**

**(g) "Certified Educator", KBEMS-E24, September 2012; and**

**(h) "Educator Practical Requirements", KBEMS-E20, July 2012, "EMS Responder Application" KBEMS E1 (9/2010);**

**(b) "Proof of Lecture Form" KBEMS 04-2004; and**

**(c) "Instructor Certification Packet" (5/2010)]**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Community and Technical College, Office for the Kentucky Board of Emergency Medical Services, 300 North Main Street, Versailles, Kentucky 40383, Monday through Friday, 8:30 a.m. to 4:30 p.m.]Section 1. EMS-TEI Requirements. (1) Only an entity approved by the Board as an EMS-TEI shall be authorized to conduct training and education programs that lead to certification or licensure by the Board.

(2) An entity that previously was certified as an EMS-TEI and had that certification revoked may be eligible to apply for certification as an EMS-TEI one (1) year after the expiration date of revocation.

(3) An applicant shall file a completed Board-approved application with the KBEMS office for certification as an EMS-TEI.

(4) Each EMS-TEI shall have:

(a) A chief administrative officer or designee who shall:

1. Be responsible for the planning, administration and oversight of the EMS-TEI;

2. Assure the quality and credentials of the program coordinator and students accepted into any program conducted by the EMS-TEI;

3. Assure the security of examination results and materials;

4. Randomly monitor the activities of the faculty and students;

5. Maintain records and documents and submit reports required by the Board; and

6. Serve as a member of the course faculty, if appropriately credentialed; and

(b) A program coordinator for paramedic training courses or lead instructor for first responder or EMT training courses who shall:

1. Assure the quality of content and presentation of course material to the student body;

2. Assure the quality and credentials of the instructional staff, adjunct faculty, examiners, and proctors;

3. Assure the quality and security of student examinations;

4. Monitor the activities of the faculty and students during the didactic, skills, and clinical or field internship and summative field evaluation phases of the educational program; and

5. Serve as a member of the course faculty, if appropriately credentialed.

(5) The chief administrative officer may also simultaneously serve as the program coordinator or lead instructor.

(6) An EMS-TEI may require competency evaluations of technical skills performance, knowledge base, or presentation skills of any staff member or potential staff member.

Section 2. EMS-TEI Certification Periods. (1) The approval of an EMS-TEI shall be valid for a period of five (5) years, notwithstanding disciplinary action as discussed in this administrative regulation.

(2) At the end of the initial five (5) year approval period, an EMS-TEI may apply for recertification for a subsequent five (5) year period.

(3) An EMS-TEI may choose to surrender its certification prior to the end of a certification period by notifying the Board in writing of the intent to do so and the intended effective date of the surrender.

Section 3. EMS-TEI Responsibilities. (1) The EMS-TEI shall maintain on file for a period of five (5) years beyond the ending

date of the program:

(a) A complete, curriculum vitae that was current at the beginning date of the EMS course. The curriculum vitae shall include a listing of academic preparation, clinical experience, current certifications and licenses for each faculty member. The EMS-TEI shall be responsible for verifying information contained on an instructor's curriculum vita;

(b) Health records for students that may be required by an EMS-TEI or through written clinical, field internship, or summative field evaluation affiliation agreements;

(c) Records of all disciplinary actions taken against a faculty member, which shall include each response or action taken as a result of a complaint or grievance; and

(d) Documentation of any other requirements as may be established by the EMS-TEI.

(2) An EMS-TEI shall assure that physical resources as required by the curriculum, including classrooms, skill practice areas, textbooks, instructional aids, equipment, and supplies are:

(a) In good working condition;

(b) Available at each class session where skills are taught or practiced; and

(c) Adequate in number for the number of students enrolled in the program to have sufficient opportunity for skills practice.

(3) The health and safety of patients, students and faculty members shall be protected while participating in educational activities.

(4) A student or a faculty member shall maintain proper personal and professional conduct during classroom and clinical or field internship or summative field evaluation activities.

(5) An EMS-TEI shall develop and make available to all prospective students a clearly defined admission policy and procedure, which shall include specific requirements for admission, including:

(a) Academic requirements;

(b) Health-related requirements; and

(c) Admission prerequisites.

(6) An EMS-TEI shall disclose to an applicant for admission:

(a) Accurate information regarding program requirements;

(b) Tuition and fees including remediation fees or other costs associated with the training and education program;

(c) A descriptive synopsis of the curriculum for each type of course taught;

(d) Course educational objectives;

(e) Classroom lecture and skill practice schedules;

(f) Clinical or field rotation locations with tentative beginning and ending dates and participation requirements for each site;

(g) Board certification or licensure requirements for the level of training and education being offered; and

(h) Prohibited actions described in KRS Chapter 311A that provide grounds for a sanction against an individual making application for certification or licensure by the Board, as described at KRS 311A.050.

(7) An EMS-TEI shall establish and maintain written policies to ensure that:

(a) Announcements and advertising accurately reflect the courses offered;

(b) A procedure exists that allows complaints and grievances to be processed if filed by an applicant, a student, or a faculty member;

(c) There is a process for a student to withdraw from a course, and, if allowed, obtain a refund of tuition or fees paid;

(d) Examinations are developed for each course; and

(e) There are established and maintained passing requirements and examination policies for each course offered by the EMS-TEI.

(8) An EMS-TEI shall assure that each student, while participating in a clinical or field rotation, is clearly identified by name and student status by the use of:

(a) A nameplate;

(b) A uniform; or

(c) Other apparent means.

(9) An EMS-TEI shall maintain, for at least five (5) years beyond the date of the last classroom session of each EMS course:

(a) The student attendance sign in sheets for each course

taught including:

1. Lectures;
2. Practical skill lessons; and
3. Clinical and field rotations;

(b) A master copy of written examinations and answer keys administered for each course taught;

(c) A master copy of practical skill examination forms used during each course taught;

(d) A master copy of the current course syllabus for the courses taught;

(e) Health records for students that may be required by an EMS-TEI or through written clinical, field internship, or summative field evaluation affiliation agreements;

(f) Records of all disciplinary actions taken against a student which shall include each response or action taken as a result of a complaint or grievance;

(g) Remediation activity for each student enrolled, including how the specific remediation was accomplished and if the process was successful; and

(h) A master file of the objectives and competencies to be achieved by students during each educational program. The file shall be reviewed annually by the EMS-TEI and updated as necessary.

**Section 4. Disciplinary Action Against an EMS-TEI.** (1) The Board shall notify the chief administrative officer of an EMS-TEI, by certified mail, of any intent to pursue disciplinary action against the EMS-TEI.

(2) The Board may take disciplinary action against an EMS-TEI, if:

(a) During a twenty-four (24) month period, an EMS-TEI's cumulative pass rate for initial training and the education programs offered falls below sixty-seven (67) percent. The pass rate percentage shall be determined by dividing the number of students that complete the certification or licensure testing process within the required time frame by the number of students who apply to participate in the certification or licensure exams;

(b) An inspection or investigation by the KBEMS office determines the EMS-TEI has not met the requirements of any section of this administrative regulation;

(c) An EMS-TEI is on probationary status and fails to meet requirements established by the Board;

(d) The faculty or a staff member reproduces or reconstructs, or attempts to reproduce or reconstruct, any portion of an examination for the purpose of assisting a student to cheat or create an unfair advantage for one (1) student over another student on the examination;

(e) The faculty or a staff member disseminates information for purposes of reproduction or reconstruction of any portion of an examination in order to assist a student to cheat or create an unfair advantage for one (1) student over another student on the examination;

(f) The faculty member or a staff member cheats, or assists students to cheat or create an unfair advantage for one (1) student over another student, on an examination;

(g) The EMS-TEI falsifies a record of education, training, or continuing education;

(h) The EMS-TEI fails to pay a fee or issues a check for any fee required by administrative regulation on an invalid account or an account that does not have sufficient funds;

(i) The EMS-TEI fails to file reports required by this administrative regulation; or

(j) The EMS-TEI fails to meet the requirements of the "EMS-TEI Affidavit".

(3) A recommendation to take disciplinary action against an EMS-TEI shall be considered in executive session of the Board and shall include the opportunity for the Chief Administrative Officer or designee to be present and make a presentation on behalf of the EMS-TEI.

(4) After consideration of information presented during the executive session, the Board may take any of the following actions:

- (a) Take no action;
- (b) Restrict the certificate of the EMS-TEI;
- (c) Establish a probationary period for the certificate of the

EMS-TEI;

(d) Suspend the certificate of the EMS-TEI; or

(e) Revoke the certificate of the EMS-TEI.

(5) The KBEMS office shall notify the chief administrative officer of the EMS-TEI by certified mail of the decision to take no action, restrict, probate, suspend, or revoke the certification of the EMS-TEI.

(6) The Board may direct an EMS-TEI against whom disciplinary action has been taken to:

(a) Not begin new courses at that level of training or education during the term of the disciplinary action and to notify students who are currently enrolled in an affected program of the action of the Board;

(b) Conduct an internal evaluation of the programs offered by the EMS-TEI. If an EMS-TEI is required to conduct an internal evaluation, it shall include a review of:

1. The qualifications, responsibilities, and performance of the program coordinator, medical director, and course faculty;
2. Student admission practices;
3. Syllabi and objectives of all courses offered;
4. Graduation requirements for all courses offered by the EMS-TEI;

5. Faculty involvement in program and course planning, serving as a liaison for clinical and field internship sites and classroom participation;

6. Clinical or field rotation requirements and activities;

7. Quality and adequacy of clinical or field rotation opportunities;

8. Textbooks, equipment, supplies and ancillary learning aids used by the EMS-TEI; and

9. The ability of the EMS-TEI to meet the stated goals and objectives of the program; and

(c) Require an EMS-TEI to provide a written report to the Executive Director of KBEMS that shall include a list of problems identified during the review process conducted pursuant to this section and a detailed corrective action plan, including a time frame for the completion of the plan.

(7) If a corrective action plan is required, the executive director, within sixty (60) days of receipt shall review the plan and notify the chief administrative officer, by certified mail, of the planned action, which may include:

- (a) Approving the entire plan;
- (b) Approving a portion or portions of the plan;
- (c) Requiring additional or alternative corrective actions; or
- (d) Forwarding the report to the Board with or without a recommendation for action by the Board.

(8) The executive director of the Board or a designee shall monitor compliance and may conduct announced or unannounced site visits to determine if all requirements established for any level of disciplinary action are being met.

(9) The Board upon recommendation of the executive director may:

- (a) Terminate disciplinary action and reinstate an EMS-TEI; or
- (b) Take action to pursue additional disciplinary action against an EMS-TEI.

(10) Any EMS-TEI against whom the Board takes disciplinary action may file an appeal pursuant to KRS Chapter 13B.

(11) Any disciplinary action taken against an EMS-TEI may also be commensurate with their status as an EMS-TA.

**Section 5. Public Notice of Negative Action.** The KBEMS office shall cause to be published, in the EMS Newsletter, or similar publication of the Board, or otherwise disseminate the name of an EMS-TEI that:

- (1) Has had no action taken based on the results of an investigation conducted as a result of a complaint;
- (2) Is placed on probationary status;
- (3) Is placed on restrictive status;
- (4) Is suspended; or
- (5) Has had certification revoked.

**Section 6. Reporting Requirements for EMS-TEI.** (1) Approved EMS-TEIs shall submit an "EMS Course Notification Report" for all courses that lead to licensure or certification by the Board to the



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

KBEMS office within ten (10) working days of the commencement of each course, which report shall contain:

- (a) The type of course to be offered;
- (b) The location for the course;
- (c) The tentative starting and ending dates of each course;
- (d) A nine (9) digit number and alpha indicator for each EMS course conducted, which shall be assigned in the following manner:

1. The first three (3) digits shall correspond to the EMS-TEI approval number assigned by the Board;

2. The fourth and fifth digits shall correspond to the fiscal, (July 1 – June 30) academic year. For example, if a course is taught between July 1, 2000 through June 30, 2001, the academic year number assigned shall be zero one (01);

3. The sixth and seventh digits shall correspond to the sequential number of courses begun between July 1 and June 30 of each year; and

4. An alpha designator that shall follow the seventh digit shall be:

- a. FR for first responder courses;
- b. B for EMT-Basic courses;
- c. P for paramedic courses;
- d. EI for EMS Instructor courses;
- e. CE for continuing education offerings; or
- f. Z for other educational offering;

(e) The maximum number of students to be accepted into the program; and

(f) Contact information for:

1. The chief administrative officer of the EMS-TEI;

2. The medical director, if required, for the training and education program; and

3. The lead program coordinator for the training and education program.

(2) Approved EMS-TEIs shall:

(a) Within two (2) weeks following an EMS course completion date, submit to the Board a Student Testing Eligibility Form; and

(b) Submit to the Board by no later than July 31, of each year an "EMS-TEI Annual Summary Report". If courses were not taught during the last reporting period an EMS-TEI shall file an annual report with the Board stating that no courses were taught during the reporting period.

~~Section 7. Requirements For All Training and Education Courses. EMS training and education courses shall meet the following instructional staff requirements:~~

~~(1) The EMS-TEI shall have instructional staff who are certified by the Board as EMS instructors and are minimally certified or licensed at the level at which the course is being offered.~~

~~(2) The EMS-TEI may also utilize adjunct faculty that meet one (1) of the requirements of Section 12 of this administrative regulation.~~

~~(3) The EMS-TEI shall have additional skill instructors for classroom sessions where skills are practiced. These sessions shall not proceed without the presence of:~~

~~(a) An instructor for the first ten (10) students; and~~

~~(b) An additional instructor for each one (1) to ten (10) additional students. The additional instructor shall not be required to be certified as an EMS instructor but shall be certified by the Board minimally at the level for the course being taught.~~

~~(4) The EMS-TEI, if providing initial training programs or continuing education programs that encompass invasive skills or procedures that routinely require medical oversight, shall have a medical director who:~~

~~(a) Is employed by or under contract with the EMS-TEI to serve as the medical director of the program;~~

~~(b) Is routinely available to the EMS-TEI to provide consult regarding issues related to the training and education program;~~

~~(c) Participates in the selection of students for the training and education program;~~

~~(d) Provides medical consultation and guidance to the course faculty; and~~

~~(e) Meets other requirements established by the Board.~~

~~Section 8. First-responder Training and Education Course~~

~~Requirements. (1) Each first-responder training and education course shall utilize the United States Department of Transportation, National Highway Traffic Safety Administration, 1995 EMT-First Responder-National Standard Curriculum and the "Emergency Medical Technician-First Responder-Instructor Manual Initial Training Curricula – Kentucky Required Mandatory Supplemental Curricula for the Emergency Medical Technician First Responder"; and include training and education in:~~

~~(a) Acquired immune deficiency syndrome, as required by KRS 214.610 and 311A.110; and~~

~~(b) The appropriate use of:~~

~~1. AEDs;~~

~~2. Oxygen therapy delivery devices, including bag-valve-mask;~~

~~3. Cervical collar and long spine Board immobilization; and~~

~~4. The sphygmomanometer and stethoscope for obtaining blood pressure.~~

~~(2) Each first-responder training and education program shall be a minimum of forty-seven and one-half (47 1/2) hours in duration.~~

~~Section 9. EMT Training and Education Course Requirements.~~

~~(1) Each EMT training and education course shall:~~

~~(a) Be a minimum of 119 hours in duration;~~

~~(b) Utilize the 1994 version of the United States Department of Transportation, National Highway Traffic Administration, Emergency Medical Technician-Basic: National Standard Curriculum;~~

~~(c) Provide training and education in acquired immune deficiency syndrome as required by KRS 311A.110; and~~

~~(d) Utilize the "Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician Basic (EMT-B)" for:~~

~~1. Initial training in the monitoring, maintaining, and discontinuing of preestablished patient intravenous infusions in prehospital, interfacility and facility to home encounters; and~~

~~2. Initial training in advanced airway management to provide assistance to those licensed to perform advanced airway procedures.~~

~~(2) Each student shall, in order to be eligible for certification in Kentucky, be required to complete a clinical or field rotation that meets the following minimum requirements:~~

~~(a) A clinical or field internship, which shall consist of at least ten (10) hours;~~

~~(b) A clinical or field internship, which shall be conducted in a hospital emergency department or a licensed ambulance service or ALS medical first-response agency;~~

~~(c) Interviews and assessments of a minimum of five (5) patients; and~~

~~(d) Record of patient history and assessment on a prehospital care report form for each of the five (5) patients required in (2)(c) of this section.~~

~~(3) The EMS-TEI Chief Administrative Officer may require the student to repeat clinical or field rotation experience, as necessary, until the EMS instructor deems the student to have achieved the goals established for the EMS education program.~~

~~(4) If, in an extreme circumstance, an EMS-TEI is unable to obtain clinical or field rotation experiences for their students, the EMS-TEI shall file with the KBEMS office a request for approval for a variance from the requirement. The written request shall include:~~

~~(a) Written evidence of a good faith effort to obtain a clinical or field rotation site, within forty (40) miles from the location of the EMT course site, by contacting at least three (3) Board-licensed ambulance services, ALS medical first response agencies; or hospital emergency departments; and~~

~~(b) A description of proposed alternatives to the clinical or field rotation.~~

~~(5) An EMT student may begin the field internship required in this section after completion of the patient assessment module of the training and education course.~~

~~Section 10. Paramedic Training and Education Programs. (1) Each paramedic training and education program shall:~~

~~(a) Utilize the 1998 version of the United States Department of Transportation, National Highway Traffic Administration, Paramedic: National Standard Curriculum, incorporated by reference in this administrative regulation requiring as a minimum, the mean num-~~

ber of hours for didactic, clinical laboratory, and summative field evaluation hours as recommended by the curriculum;

(b) Provide training and education in AIDS as required by KRS 311A.110, for which the printed curriculum has been reviewed, approved and assigned an approval number by the HIV and AIDS Branch of the Cabinet for Health Services unless all students are credentialed currently;

(c) Provide training and education in determination of death and preservation of evidence as required by administrative regulation;

(d) Have a medical director who conducts or supervises a minimum of three (3) oral examinations with each student;

1. One (1) during the didactic portion of the course;

2. One (1) during the clinical portion of the course; and

3. One (1) during the final 100 hours of the field summative evaluation.

(2) As a part of each paramedic program, the EMS-TEI shall provide sufficient opportunities and locations for students to complete clinical rotations that shall:

(a) Be conducted at hospitals, clinics, physician offices, or other health care facilities. The EMS-TEI shall have a written contract, affiliation agreement or memorandum of agreement with each clinical rotation site, which at a minimum, outlines the responsibilities of each entity and reporting requirements for students while involved in clinical training and education;

(b) Be supervised by faculty from the paramedic training and education program or by clinical coordinators or supervisors employed by or under contract with the EMS-TEI to monitor student activity while in the clinical setting; and

(c) Require that a specified number of the following procedures be accomplished under supervision during the clinical rotation:

1. ALS patient assessments;

2. Intubations and other airway management techniques;

3. Placement of I.V. and I.O. lines;

4. Administration of medications utilizing I.V., I.M., I.O., endotracheal, subcutaneous, inhalation, oral and rectal routes;

5. Mixing, if applicable, and administration of I.V. piggyback medications;

6. Electrocardiographic monitoring and dysrhythmia interpretation; and

7. Other procedures as may be required by the program medical director.

(3) As a part of each paramedic program, the EMS-TEI shall provide sufficient opportunities and locations for students to complete a field internship and summative field evaluation that shall be:

(a) Conducted at Class I, Class III, or Class VII locations licensed as ALS providers by the Board. An EMS-TEI may apply to the Board for consideration of other field internship or summative field evaluation sites where a portion of the field internship or summative field evaluation requirement may be obtained. The EMS-TEI shall have a written contract, affiliation agreement or memorandum of agreement with each field internship or summative field evaluation site which as a minimum, outlines the responsibilities of each entity and reporting requirements for students while involved in field internship or summative field evaluation training;

(b) Monitored by preceptors; and

(c) A minimum of seventy-five (75) ALS patient contacts.

Section 11. Continuing Education. (1) Continuing education offerings shall:

(a) Contain material relevant to the job duties and professional development of EMS personnel; and

(b) Be conducted at a level appropriate for the discipline of the participants.

(2) Continuing education offerings may consist of:

(a) Those provided by an EMS-TEI or EMS provider;

(b) National or international programs;

(c) Symposia or national or international special schools;

(d) On-line or distance education, which shall not exceed fifty (50) percent of the total required continuing education as established by the Board; or

(e) Other education approved by the ambulance service's medical director.

(3) Organizations other than EMS-TEIs that provide emergency medical services continuing education to the general public shall complete a Board approved application.

(4) Organizations certified to provide continuing education may utilize the Kentucky "Optional Training Curriculum" for use in service-specific continuing education for its employees or other EMTs receiving such training and education. Each student shall complete training and education and competency-based evaluations for each of the following procedures prior to being authorized to perform each respective procedure:

(a) "Application of End Tidal CO2 Monitoring";

(b) "Use of an Automated Blood Glucose Analysis Device";

(c) "EMT Application of Pulse Oximetry"; and

(d) "Application of Electrocardiogram Electrodes and Monitor".

(5) An organization certified to provide continuing education that desires to conduct training and education for EMTs who were initially certified before the implementation of the Kentucky supplemental curricula established in this administrative regulation may:

(a) Use the printed documents available from the Board; or

(b) Use service-developed printed curricula documents that have been submitted to, reviewed and approved by the Board.

Section 12. Continuing Education Instructor Requirements. (1) The following persons shall be qualified to conduct continuing education courses for persons certified or licensed by the Board:

(a) A physician licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(b) A registered nurse licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(c) A paramedic licensed by the Board or licensed or certified in another state;

(d) An EMSI certified in Kentucky; or

(e) An individual who:

1. Is certified by a state or federal agency to teach or perform subject matter relevant to the National Standard Curriculum for a prehospital discipline;

2. Is certified by a nationally-recognized entity to provide EMS related training and education;

3. Is a presenter at a National Symposium which has been accredited by the Continuing Education Coordinating Board for EMS; or

4. Is a presenter approved by EMS medical director or EMS-TEI as uniquely qualified by experience or education.

(2) Individuals shall not hold themselves out to be an approved continuing education instructor if they do not meet the qualifications of this section.

Section 13. Pilot Programs. (1) An EMS-TEI, Class I, Class III, or Class VII provider may apply to the KBEMS office for authorization to perform field pilot testing of specialized training and education and associated procedures not otherwise provided for in administrative regulations.

(2) An entity seeking authorization to execute a field pilot test shall submit a written request to the Board with a written description of:

(a) How the pilot program shall be implemented and monitored;

(b) The proposed training and education curriculum;

(c) A list of instructors and their qualifications;

(d) The beginning and ending dates of the field pilot testing program;

(e) How the procedure shall benefit or improve the quality of patient care; and

(f) The methods to be used to evaluate the proposed training and education and procedure.

(3) An authorized entity approved by the Board to conduct a pilot program shall agree, in writing:

(a) To submit periodic reports related to the progress of the pilot program, as required by the Board; and

(b) To abide by the requirements established by the Board for the pilot program.

(4) An individual otherwise certified or licensed by the Board who successfully completes an approved pilot program may perform the procedures relevant to the training and education received

in the pilot program subject to protocols established by the medical director.

(5) The Board may establish pilot program limitations on:

(a) The geographic area or service location where the procedure may be performed; or

(b) The performance of the procedure related to:

1. A specific event;

2. A disaster; or

3. A designated directive.

(6) The Board may authorize and utilize physicians, other than EMS medical directors to supervise and monitor training and education and students involved in a pilot program.

(7) The Board may restrict or limit actions that involve the performance of an invasive procedure or the administration of medication subject to:

(a) Required physician or medical director oversight; or

(b) The establishment of protocols that have been reviewed and approved by the state medical advisor and the Board.

Section 14. EMS Instructors. (1) An applicant for certification as a Kentucky certified EMS instructor shall be certified or licensed as a first responder, an EMT, or a paramedic. Unless certified as a first responder or EMT, an RN or EMS medical director may only be certified as a Level III EMS instructor.

(2) An individual seeking certification as an EMS instructor shall:

(a) Complete a United States Department of Transportation National Standard Curriculum for EMS instructor course or other Board-authorized methods of instruction program conducted by an entity approved by the Board;

(b) Have been certified at the level for which they are applying for a minimum of two (2) years and shall provide documentation of a minimum of two (2) years experience with:

1. An ambulance service;

2. A medical first response agency such as a fire department or rescue squad;

3. A hospital emergency department as a caregiver; an industrial emergency response team or service in an industrial first aid station; or

4. Another environment determined by the Executive Director to have met this requirement;

(c) If teaching a first responder or EMT course, applicants shall provide documentation that they have assisted with a basic training course at the level for which they are making application during which they have made a minimum of five (5) lecture and five (5) skill presentations under the supervision of a certified instructor. The certified instructor of the basic training course shall have served as a course coordinator or lead instructor for at least three (3) separate basic training courses and shall not have been subject to disciplinary action or reprimand by the Board within the previous thirty-six (36) months;

(d) Provide evidence of completion of a Board-sponsored curriculum orientation program for the appropriate level of certification;

(e) Submit a completed "Application for EMS Instructor Initial Certification";

(f) Not be an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense;

(g) Not have been disciplined or ever subject to discipline pursuant to KRS Chapter 311A that would prevent current certification, or have an action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States; and

(h) Pay any fees required by 202 KAR 7:030.

(3) The expiration date of an EMS instructor shall be the same as those of other certificates or licenses issued by the Board.

(4) EMS instructors shall be certified as:

(a) Level I, which qualifies the individual to teach first responder courses or continuing education;

(b) Level II, which certifies the individual to teach EMT and first responder courses or continuing education; or

(c) Level III, which certifies the individual to teach paramedic courses or continuing education.

(5) No individual shall be certified as an EMS instructor at a level greater than the level at which they are certified or licensed.

Section 15. Renewal of EMS Instructor Certification. (1) A person certified by the Board as an EMS instructor shall be eligible to renew the EMS instructor certification if the person:

(a) Maintains state certification or licensure as a provider, which as a minimum is at the level at which they are certified to instruct;

(b) Presents written evidence of completion of current HIV/AIDS training and education required by KRS 311A.110;

(c) During the preceding two (2) years, obtains a minimum of fifty-two (52) contact hours, providing documented evidence of completion of each hour, in the following categories:

1. A minimum of four (4) contact hours on topics related to methods of instruction (MOI);

2. Conducts a minimum of twenty-four (24) hours, or one (1) hour per each full month of certification if a certificate has been in effect for less than twenty-four (24) months, of instruction on at least three (3) different topics that are within the training and education requirements and the scope of practice for a level at which they are authorized to instruct; and

3. Presents evidence of participatory involvement in a minimum of twenty-four (24) hours, or one (1) hour per each full month of certification if a certificate has been in effect for less than twenty-four (24) months, of patient care experience with an ambulance service or other organization having an EMS mission, fire department, rescue squad, mining or other industrial health setting providing emergency medical services to their employees or members of the general public in any of the following roles of participation:

a. Actual patient emergency responses;

b. Agency quality assurance activities related to EMS; or

c. Enrolled as a participant or instructor for continuing education or agency-specific in-service training and education sponsored by the agency. Any hours obtained by participation as the instructor of this in-service training and education shall be in addition to the twenty-four (24) hours of instruction referenced in this administrative regulation; or

(d) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense;

(e) Has not been disciplined pursuant to KRS Chapter 311A that would prevent renewal certification, or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States;

(f) Pays any fee required by 202 KAR 7:030; and

(g) Submits to the Board a completed application for EMS instructor recertification that shall:

1. Be signed by the EMS instructor; and

2. Include a statement in which the EMS instructor certifies the truth of the information supplied.

(2) An application for renewal of certification as an EMS instructor shall not be considered if:

(a) The application is postmarked to the Board after the certification expiration date of the applicant; or

(b) Prior to the certification expiration date, the EMS instructor applicant has not met the recertification requirements of this administrative regulation.

(3) Upon expiration of certification as an EMS instructor, the person may not perform any authorized function restricted by KRS or KAR to a Kentucky EMS instructor.

Section 16. Transition for Currently-certified Instructors. Instructors certified on the effective date of this administrative regulation shall be transitioned as follows:

(1) First responder instructors shall be certified as Level I EMS instructors;

(2) EMT instructors shall be certified as Level I and Level II EMS instructors; and

(3) Licensed paramedics, RNs or EMS medical directors who can provide documentation no later than December 31, 2004, from a Kentucky approved EMS-TEI of having served as a paramedic

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

course coordinator or as an instructor for a Kentucky-approved paramedic program, during the period between January 1, 1999, and December 31, 2004 during which they can document instruction in a minimum of fifty (50) classroom hours in a minimum of five (5) different subject areas which shall include instruction in pharmacology, cardiac emergencies, and traumatic injuries shall be certified as Level III EMS instructors.

**Section 17. EMS Instructor Reciprocity.** A person certified in another state as an EMS instructor shall be eligible for Kentucky certification as an EMS instructor after the person meets the requirements established in this administrative regulation.

**Section 18. EMS Evaluator.** (1) An applicant for endorsement as an EMS evaluator shall:

(a) Be certified as a Level I, Level II or Level III EMS instructor; or

(b) Hold current unrestricted licensure in Kentucky as:

1. A registered nurse who has specific expertise for the discipline in which they are serving as an evaluator; or

2. A physician who has specific expertise for the discipline in which they are serving as an evaluator;

(c) Have completed a Board-approved evaluator training program;

(d) Have a minimum of two (2) years patient care experience prior to serving as an evaluator;

(e) Submit a completed "Application for EMS Evaluator";

(f) Not be an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and

(g) Not have been disciplined or subject to discipline pursuant to KRS Chapter 311A that would prevent endorsement, or have an action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.

(2) The endorsement of an EMS evaluator shall be commensurate with the expiration date of a certificate or license issued by the Board, the KBN or KBML.

(3) EMS evaluators shall be certified as:

(a) Level I, which qualifies the individual to evaluate first responder courses;

(b) Level II, which certifies the individual to evaluate EMT and first responder courses; or

(c) Level III, which certifies the individual to evaluate paramedic, EMT, or first responder courses.

(4) An individual shall not be given an endorsement as an EMS evaluator at a level greater than the level at which the individual is certified or licensed.

**Section 19. Renewal of EMS Evaluator Endorsement.** (1) A person who holds an endorsement as an EMS evaluator shall be eligible to renew the EMS evaluator endorsement if the person:

(a) Maintains state certification or licensure as a provider, which as a minimum is at the level at which they are certified to instruct. This includes certification or licensure by the Board, licensure as a RN by the KBN, or licensure as a physician by the KBML;

(b) Attends Board-required update training;

(c) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense;

(d) Has not been disciplined pursuant to KRS Chapter 311A that would prevent a renewal endorsement, or does not have an action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States; and

(e) Submits to the Board a completed Application for Renewal of EMS Evaluator Endorsement that shall:

1. Be signed by the EMS evaluator; and

2. Include a statement in which the EMS evaluator certifies the truth of the information supplied.

(2) An Application for Renewal of Endorsement as an EMS

evaluator shall not be considered if:

(a) The application is postmarked to the Board after the endorsement expiration date of the applicant; or

(b) Prior to the endorsement expiration date, the EMS evaluator applicant has not met the recertification requirements of this administrative regulation.

(3) Upon expiration of endorsement as an EMS evaluator, the person shall not function as a Kentucky EMS evaluator.

**Section 20. Instructor and Evaluator Oversight.** The Board may direct and assign the KBEMS office or other qualified individuals to conduct scheduled or unscheduled visits to an EMS instructor's classroom or to an EMS evaluator's testing site to verify compliance with the instructional or evaluation quality and performance outlined in the administrative regulation. KBEMS office staff conducting any visit shall be certified or licensed at or above the level of the training or education program being visited.

**Section 21. EMS TA.** (1) An entity approved by the Board or an authorized EMS TEI may conduct skills and practical examinations for certification or licensure.

(2) An applicant shall file a completed application for certification as an EMS TA.

(3) A previously certified EMS TA whose certification has been revoked may be eligible for certification as an EMS TA after one (1) year from the date of revocation.

(4) Each certified EMS TA shall have a chief administrative officer who shall:

(a) Be responsible for the planning, administration and oversight of the EMS TA;

(b) Assure the quality and credentials of students accepted into examination conducted by the EMS TA;

(c) Coordinate scheduling of examination dates and the need for appropriate proctors or representatives with the KBEMS office;

(d) Assure the security of examination results and materials; and

(e) Maintain records and documents and submit reports required by the Board.

(5) A person shall not function as an examiner or proctor for certification or licensure examination if the person:

(a) Served as the chief administrative officer, program coordinator or lead instructor, or course instructor for more than ten (10) percent of the total scheduled hours of instruction for an educational program for which candidates are being tested as described in this administrative regulation;

(b) Served as a clinical or field preceptor for the individual being tested;

(c) Supervises or is supervised by the candidate;

(d) Is a family member of the candidate; or

(e) Has a conflict of interest that may potentially bias the examiner or examination representative of the practical skills portion of the certification examination toward or against the candidate.

(6) The EMS TA shall:

(a) Prior to January 1, 2005, be responsible for securing examiners for the practical skill portion of the certification examination who shall:

1. Have current certification or licensure from the Board to perform the skills at or above the level of training and education at which the candidate being tested or is a physician or RN that has specific expertise for the discipline in which they are serving as an evaluator;

2. Have completed a Board-approved evaluator orientation program prior to serving as an evaluator;

3. Meet other requirements of the NREMT; and

4. Have a minimum of two (2) years patient care experience prior to serving as an examiner.

(b) After January 1, 2005, be responsible for securing examiners for the practical skill portion of the certification examination who shall be certified pursuant to Section 18 of this administrative regulation;

(c) Notify the KBEMS office at least forty-five (45) days prior to conducting a practical exam; and

(d) Verify the eligibility of a candidate applying to initially test or retest for the practical skills portion of the certification examination.

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

Eligibility for testing or retesting shall follow the guidelines of the National Registry of Emergency Medical Technicians.

(7) A representative designated by the Board may attend practical test sites.

(8) The KBEMS office shall schedule and conduct all written examinations and may conduct practical examinations at any level certified or licensed by the Board. The Board shall be exempt from maintaining certification as an EMS-TEI or EMS-TA in order to conduct written or practical testing.

(9) The Board may require retesting of any candidate participating in an examination process if the examination site or examiners utilized are found to be noncompliant with administrative regulations.

**Section 22. EMS-TA Certification Periods.** (1) An EMS-TA certification shall be valid for a period of five (5) years, unless modified by a disciplinary action.

(2) An EMS-TA may surrender certification prior to the end of a certification period by written notification, which shall include providing the intended effective date of such surrender.

**Section 23. Disciplinary Action Against an EMS-TA** The Board may take disciplinary action against an EMS-TA, if:

(1) An inspection or investigation by the KBEMS office determines the EMS-TA has not met the requirements of any section of this administrative regulation;

(2) An EMS-TA is on probationary status and fails to meet requirements established by the Board;

(3) An agent of EMS-TA reproduces or reconstructs, or attempts to reproduce or reconstruct, any portion of an examination for the purpose of assisting another to cheat on the examination;

(4) An agent of EMS-TA disseminates information for purposes of reproduction or reconstruction of any portion of an examination in order to assist another to cheat on the examination;

(5) An agent of EMS-TA cheats, or assists another to cheat, on an examination;

(6) The EMS-TA or agent falsifies a record or document;

(7) The EMS-TA or agent fails to pay a fee or issues a check for any fee required by administrative regulation on an invalid account or an account that does not have sufficient funds;

(8) The EMS-TA or agent fails to file reports required by this administrative regulation; or

(9) The EMS-TA or agent fails to meet the requirements of the "EMS-TA Affidavit".

**Section 24. Incorporated by Reference.** (1) The following documents are incorporated by reference:

(a) The "EMS-TEI Affidavit" (June 2003);

(b) The "EMS-TEI Annual Summary Report" (June 2003);

(c) The "Application of End-Tidal CO<sub>2</sub> Monitoring" (June 2003);

(d) The "Use of an Automated Blood Glucose" (June 2003);

(e) The "Application of Pulse Oximetry" (June 2003);

(f) The "Application of Electrocardiogram Electrodes and Monitor" (June 2003);

(g) The "Application of EMS Instructor Initial Certification" (June 2003);

(h) The "Application for EMS Evaluator" (June 2003); and

(i) The "Student Eligibility Form" (June 2003).

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2545 Lawrenceburg Road, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (30 Ky.R. 167; Am. 935; 1233; 1495; eff. 11-19-2003.)]

This is to certify that the Acting Executive Director for the Kentucky Board of Emergency Medical Services has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

LEWIS PREWITT, Acting Executive

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: June 15, 2012 at noon

CONTACT PERSON: Pamela Duncan, Legal Counsel, Kentucky Board of Emergency Medical Services, KCTCS, 300 North

Main Street, Versailles, Kentucky 40383, phone (859) 256-3217, fax (859) 256-3127.

### **CABINET FOR ECONOMIC DEVELOPMENT Kentucky Economic Development Finance Authority (As Amended at ARRS, September 17, 2012)**

#### **307 KAR 1:005. Applications for Kentucky Incentive Programs.**

RELATES TO: KRS 154.12-100, 154.20-033, 154.31, 154.32-010

STATUTORY AUTHORITY: KRS 154.12-100, 154.20-033, 154.31-030, 154.32-030

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.12-100, 154.20-033, 154.31-030 and 154.32-030 authorize the Kentucky Economic Development Finance Authority to establish additional procedures and standards for the application process for various incentive programs. KRS 154.20-033 authorizes the Kentucky Economic Development Finance Authority to impose fees in conjunction with the application process. This administrative regulation incorporates by reference the applications for these incentives and establishes the fee structure.

**Section 1.** An applicant for an incentive program shall submit the information required by the Instruction Sheet, Application for Kentucky Business Investment (KBI) Program, Kentucky Enterprise Initiative Act (KEIA), Economic Development Bond (EDB).

**Section 2.** Kentucky Business Investment (KBI) Program. An applicant for the Kentucky Business Investment (KBI) Program shall submit:

(1) The following completed forms:

(a) Application for Incentive Programs, Project Information;

(b) Application for Incentive Programs, Kentucky Business Investment (KBI) Program;

(c) Application for Incentive Programs, Certification of Application; and

(d) Application for Incentive Programs, Attachment A, Incentive Disclosure Statement;

(2) An application fee in the amount of \$1,000; and

(3) An administrative fee equal to one-fourth (0.25) percent of the incentive amount authorized in the tax incentive agreement up to a maximum of \$50,000.

**Section 3.** Kentucky Enterprise Initiative Act (KEIA) Program. An applicant for the Kentucky Enterprise Initiative Act (KEIA) Program shall submit:

(1) The following completed forms:

(a) Application for Incentive Programs, Project Information;

(b) Application for Incentive Programs, Kentucky Enterprise Initiative Act (KEIA);

(c) Application for Incentive Programs, Certification of Application; and

(d) Application for Incentive Programs, Attachment A, Incentive Disclosure Statement; and

(2) An application fee in the amount of \$500.

**Section 4.** Economic Development Bond (EDB) Program. An applicant for an Economic Development Bond (EDB) shall submit the following completed forms:

(1) Application for Incentive Programs, Project Information;

(2) Application for Incentive Programs, Economic Development Bonds (EDB) – Company portion;

(3) Application for Incentive Programs, Economic Development Bonds (EDB) – Local portion;

(4) Application for Incentive Programs, Certification of Application; and

(5) Application for Incentive Programs, Attachment A, Incentive Disclosure Statement.

**Section 5.** Incorporation by Reference. (1) The following material is incorporated by reference:

VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(a) "Instruction Sheet, Application for Kentucky Business Investment (KBI) Program, Kentucky Enterprise Initiative Act (KEIA), Economic Development Bond (EDB)", Rev. 4/2012;

(b) "Application for Incentive Programs, Project Information", Rev. 4/2012;

(c)(b) "Application for Incentive Programs, Kentucky Business Investment (KBI) Program", Rev. 4/2012;

(d)(e) "Application for Incentive Programs, Kentucky Enterprise Initiative Act (KEIA)", Rev. 4/2012;

(e)(d) "Application for Incentive Programs, Economic Development Bonds (EDB) – Company portion", Rev. 4/2012;

(f)(e) "Application for Incentive Programs, Economic Development Bonds (EDB) – Local portion", Rev. 4/2012;

(g)(f) "Application for Incentive Programs, Certification of Application", Rev. 4/2012; and

(h)(g) "Application for Incentive Programs, Attachment A, Incentive Disclosure Statement", Rev. 4/2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Economic Development, Department of Financial Incentives, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JEAN HALE, Chairman

LARRY HAYES, Secretary

APPROVED BY AGENCY: May 31, 2012

FILED WITH LRC: June 15, 2012 at 2 p.m.

CONTACT PERSON: Janine Coy-Geeslin, Staff Attorney, Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Corrections**  
**(As Amended at ARRS, September 17, 2012)**

**501 KAR 6:230. Little Sandy Correctional Complex.**

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. 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 Little Sandy Correctional Complex.

Section 1. Incorporation by Reference. (1) "Little Sandy Correctional Complex Policies and Procedures," September[July] 11, 2012[April 14, 2008], are incorporated by reference. Little Sandy Correctional Complex Policies and Procedures include:

LSCC 01-12-01 Public Information and Media Communication (Amended 9/11/12[Added 7/11/12])

LSCC 02-01-03 Fiscal Management Agency Funds (Added 4/14/08)

LSCC 06-01-01 Offender Records (Added 4/14/08)

LSCC 08-01-01 Occupational Exposure to Serious and Infectious Diseases (Added 2/15/08)

LSCC 10-01-01 Special Management Unit (Amended 9/11/12[Added 7/11/12])

LSCC 11-02-01 Food Service Security (Added 4/14/08)

LSCC 11-06-01 Health Requirement of Food Handlers (Added 2/15/08)

LSCC 11-07-01 Food Service: Inspections and Sanitation (Added 4/14/08)

LSCC 12-01-01 Clothing, Bedding, Hygiene Supplies and Barber Shop (Amended 9/11/12[Added 7/11/12])

LSCC 12-02-01 Sanitation Inspections (Amended

9/11/12[Added 7/11/12])

LSCC 12-03-01 Vermin and Insect Control (Amended 9/11/12[Added 7/11/12])

LSCC 13-02-03 Continuity of Care: Health Evaluations, Intra-System Transfer, Individual Treatment Plans (Added 2/15/08)

LSCC 13-03-01 Use of Pharmaceutical Products (Added 2/15/08)

LSCC 13-13-01 Inmate Self-Administration of Medication (Added 2/15/08)

LSCC 14-02-01 Legal Services Program (Added 4/14/08)

LSCC 15-01-01 Drug Abuse Testing (Added 2/15/08)

LSCC 16-01-01 Inmate Visiting (Added 4/14/08)

LSCC 16-02-02 Inmate Correspondence and Privileged Mail (Added 2/15/08)

LSCC 16-03-01 Inmate Telephone Communications (Added 2/15/08)

LSCC 17-01-01 LSCC Inmate Property Control (Added 4/14/08)

LSCC 18-01-01 Inmate Classification (Amended 9/11/12[Added 7/11/12])

LSCC 18-02-01 Meritorious Housing (Added 2/15/08)

LSCC 19-01-01 Inmate Work Program (Added 2/15/08)

LSCC 20-01-01 Educational Programs (Amended 9/11/12[Added 7/11/12])

LSCC 22-02-01 Inmate Clubs and Organizations (Added 2/15/08)

LSCC 25-01-01 Pre-Release Program (Amended 7/11/12[Added 2/15/08])

LSCC 25-01-02 Inmate Release Process (Added 4/14/08)

LSCC 26-01-01 Citizen Involvement and Volunteer Services Programs (Added 2/15/08)

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LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: June 27, 2012

FILED WITH LRC: July 11, 2012 at 4 p.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Corrections**  
**(As Amended at ARRS, September 17, 2012)**

**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,

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.3105, 439.3107, 439.345, 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. 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," September[July] 11, 2012[March 12, 2012], are incorporated by reference. Probation and Parole Policies and Procedures include:

27-06-02 Equal Access to Services (Amended 9/11/12[7/11/12][Added 1/12/05])

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

27-07-01 Cooperation with Law Enforcement Agencies (Amended 7/11/12[Added 1/12/05])

27-08-01 Critical Incident Planning and Reporting and Use of Force (Amended 12/16/11)

27-09-01 [Kentucky] Community Resources[Directory] (Amended 7/11/12 [Added 1/12/05])

27-10-01 Pretrial Diversion (Amended 7/11/12 [4/12/05])

27-10-02 Mandatory Re-Entry Supervision (Amended 3/12/12)

27-10-03 Post-incarceration Supervision (Amended 3/12/12)

27-11-01 Citizen Complaints (Amended 9/11/12[7/11/12][2/13/06])

27-11-02 Staff-Offender Interaction (Amended 9/11/12[7/11/12][Added 9/12/08])

27-12-01 Case Classification (Amended 3/12/12)

27-12-03 Initial Interview and Intake of New Case (Amended 7/11/12[3/12/12])

27-12-04 Conditions of Supervision Document and Request for Modification (Amended 12/16/11)

27-12-05 Releasee's Report Document (Amended 7/11/12[Added 1/12/05])

27-12-06 Grievance Procedures for Offenders (Amended 12/16/11)

27-12-07 Administrative Caseloads (Amended 7/11/12[3/12/12])

27-12-11 Guidelines for Monitoring Financial Obligations (Amended 3/12/12)

27-12-13 Community Service Work (Amended 7/11/12[Added 1/12/05])

27-12-14 Offender Travel (Amended 12/16/11)

27-13-01 Drug and Alcohol Testing of Offenders (Amended 9/11/12[7/11/12][3/12/12])

27-14-01 Interstate Compact (Amended 3/12/12)

27-15-01 Investigating and Reporting Violations and Unusual Incidents (Amended 3/12/12)

27-15-03 Graduated Sanctions and Discretionary Detention (Amended 3/12/12)

27-16-01 Search, Seizure, and Processing of Evidence (Amended 7/11/12[12/9/08])

27-17-01 Absconder Procedure[Procedures] (Amended 7/11/12[4/12/05])

27-18-01 Probation and Parole Issuance of Detainer or Warrant (Amended 7/11/12[4/12/05])

27-19-01 Preliminary Revocation Hearing (Amended 3/12/12)

27-20-03 Parole Compliance Credit (Amended 3/12/12)

27-21-01 Apprehension of Probation and Parole Violators (Amended 12/16/11)

27-23-01 In-state Transfer (Amended 7/11/12[Added 1/12/05])

27-24-01 Releasing Offender from Active Supervision (Amended 12/16/11)

27-24-02 Reinstatement of Offenders to Active Supervision (Amended 7/11/12[Added 1/12/05])

27-26-01 Assistance to Former Offenders and Dischargees (Amended 7/11/12[2/13/06])

27-30-01 Sex Offender Registration (Amended 12/16/11)

27-30-02 Sex Offender Supervision (Amended 7/11/12[3/12/12])

[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, Confidentiality, Timing, and General Comments (Amended 12/16/11)

28-01-02 Probation and Parole Investigation Documents (Administrative Responsibilities) (Amended 12/16/11)

28-01-03 Presentence, Post-sentence, and Other Investigative Reports (Amended 3/12/12)

28-01-08 Calculation of Custody Time Credit (Amended 9/11/12[7/11/12][3/12/12])[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 3/12/12)

28-03-02 Release on Parole (Amended 12/16/11)

28-04-01 Furlough Verifications (Amended 7/11/12[Added 1/12/05])

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LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: July 2, 2012

FILED WITH LRC: July 11, 2012 at 4 p.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (As Amended at ARRS, September 17, 2012)

#### 815 KAR 35:020. Electrical Inspections.

RELATES TO: KRS 227.480, 227.487, 227.491

STATUTORY AUTHORITY: KRS 227.480

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.480 requires the Department of Housing, Buildings and Construction to promulgate administrative regulations to describe the circumstances for which electrical inspections by a Kentucky certified electrical inspector are required for electrical construction, installations, or repairs of any electrical wiring. This administrative regulation **establishes the requirements for electrical inspections of electrical construction, installations, and repairs[sets forth the circumstances, conditions and instances for which electrical inspections shall be conducted within the Commonwealth by a certified electrical inspector having jurisdiction, as well as for which electrical construction, installations, and repairs].**

Section 1. Inspections. The department or a certified electrical **inspector[inspector(s)]** having jurisdiction shall inspect electrical construction, installations, and repairs, for compliance with NFPA 70, the National Electric Code, as adopted and incorporated by reference in 815 KAR 7:120, Kentucky Building Code, 815 KAR 7:125, Kentucky Residential Code, and 815 KAR 10:060, **Kentucky** Standards of Safety.

Section 2. Mandatory Electrical Inspections. (1) The department or a certified electrical **inspector[inspector(s)]** having jurisdiction shall inspect electrical construction, installations, and repairs upon request by the permit holder or property owner.

(2) The permit holder or property owner shall be responsible for scheduling an appointment for inspection with the electrical inspection authority for the jurisdiction.

(3) Each mandatory electrical inspection shall be scheduled and completed within five (5) working days of the permit holder or property owner's request for inspection.

(4) Rough-in inspections shall be conducted on all permitted electrical work prior to covering or concealment.

(5) If conditions require partial coverage of the permitted electrical work, permission shall be requested of and received from the electrical inspector prior to coverage or concealment.

(6) Covering an installation without final approval or permission of the electrical inspector shall result in the uncovering of the electrical work for inspection, unless determined unnecessary to conform compliance with the National Electric Code.

(7) A final inspection shall be conducted by the electrical inspector after completion of the permitted electrical work and prior to occupancy. **[(8) A temporary or partial final inspection may be conducted if:**

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

~~(a) The temporary or partial final inspection will not prevent the remaining portion of the permitted work from being inspected; and~~

~~(b) The electrical installations subject to temporary or partial inspection are separate and distinguishable from installations remaining to be inspected.]~~

Section 3. Permissive electrical inspections. (1) A temporary or partial final inspection may be conducted if:

(a) The temporary or partial final inspection will not prevent the remaining portion of the permitted work from being inspected; and

(b) The electrical installations subject to temporary or partial inspection are separate and distinguishable from installations remaining to be inspected.

(2) A voluntary inspection for any electrical installation, repair, or maintenance, not subject to mandatory requirements as set forth in Section 2 of this administrative regulation, may be requested and scheduled with the certified electrical inspector[inspector(s)] having jurisdiction.

Section 4. Exemptions from mandatory electrical inspections. Electrical inspections shall not be required for:

(1) Electrical work beyond the scope of the NFPA 70 National Electric Code incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125;

(2) Electrical installations, repairs or maintenance within structures determined by the department as not meeting the definition of "building" under KRS 198B.010(4);

(3) Electrical work which is not subject to permitting requirements;

(4) Electrical wiring under the exclusive control of electric utilities, in accordance with KRS 227.460;

(a) For the purpose of communication, metering, or for the generation, control, transformation, transmission and distribution of electric energy located in buildings used exclusively by utilities for such purposes;

(b) Located outdoors on property owned or leased by the utility; or

(c) Located on public highways, streets or roads, or outdoors by established rights on private property];

(5) Electrical wiring of a surface coal mine, an underground coal mine, or at a coal preparation plant; and

(6) Appliances.

Section 5. Access. All access necessary for inspections shall be provided by the person[person(s)] obtaining the electrical permit or requesting the electrical inspection.

AMBROSE WILSON IV, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 11, 2012 at 4 pm.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone 502-573-0365 ext. 144, fax 502-573-1057.

### CABINET FOR HEALTH AND FAMILY SERVICES Governor's Office of Electronic Health Information (As Amended at ARRS, September 17, 2012)

900 KAR 9:010. Kentucky Health Information Exchange participation.

RELATES TO: KRS 194A.030(1)(e)[216.267]

STATUTORY AUTHORITY: KRS [194A.030, —KRS] 194A.050(1)[, KRS 205.520]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(1)(e) requires the Governor's Office of Electronic Health Information (GOEHI) within the Cabinet for Health and Family Services [seeks] to improve patient care, reduce medical errors, and make more efficient use of health care dollars by reducing redun-

dant services. To support the health care delivery system using electronic information technology as directed by KRS 194A.030(1)(e)[facilitate that effort], GOEHI has implemented a Kentucky Health Information Exchange (KHIE). This administrative regulation establishes the procedures for participation by health care[healthcare] providers in the KHIE.

Section 1. Definitions. (1) "CCD" means the Continuity of Care Document which is:

(a)[as] Defined by the Health Information Technology Standards Panel (HITSP) of the American National Standards Institute (ANSI); and

(b)[, which may be] Found in the "HITSP Summary Documents Using HL7 Continuity of Care (CCD) Component", version 2.5, July 8, 2009[at <http://wiki.hitsp.org/docs/C32/C32-1.html>].

(2) "Edge services" means hardware and software technology used in the storage and transmission of participant data.

(3) "Health care[Healthcare]" provider" is defined by KRS 311.621 (10).

(4) "HIPAA" is defined by KRS 216.263 (4).

(5) "HL7 transaction" means the specifications for electronic data exchange by health care[healthcare] environments as defined by ANSI that may be found at <http://www.hl7.org/implement/standards/ansiapproved.cfm?ref=nav>

(6) "Interface" means the point of interaction or communication between the participant's health information system and the KHIE.

Section 2. Participation in the KHIE. In order to participate in the KHIE, the health care[healthcare] provider shall:

(1) Have entered into an agreement, using either:

(a) The GOEHI - Form 1A, [GOEHI,] Governor's Office of Electronic Health Information Exchange Hospital Participation Agreement; or

(b) The GOEHI - Form 1B, [GOEHI] Governor's Office of Electronic Health Information Exchange Participation Agreement Other Providers;

(2) Continue to operate under the agreement entered into under subsection (1) of this section without the agreement being terminated; and

(3) Be, the agreement has not been terminated, and the healthcare provider is:

(a)[(1)] A covered entity as defined by HIPAA;

(b)[(2)] The Kentucky Department for Medicaid Services; or

(c)[(3)] The Kentucky State Laboratory, Division of Laboratory Services, Department of Public Health.

Section 3. Kentucky Health Information Exchange services. KHIE shall provide information sharing and software for the following:

(1) A CCD interface using web services to support data exchange with participants;

(2) Support for a standard series of HL7 transactions sent from the health care provider's[healthcare providers'] health information system via secure edge services for storage and retrieval; and

(3) Collaboration with participants to support development of the interfaces required for participants to connect to KHIE.

Section 4. Participant responsibilities. Participants shall be[are] responsible for building interfaces to connect to the KHIE.

Section 5. Data exchanged by the Kentucky Health Information Exchange. KHIE may[will] exchange data and make data available consisting of patient admission, discharge and transfer systems, laboratory systems, diagnostic imaging systems, medication histories, allergies, and technologically available patient information required to support data exchange.

Section 6. Access to data by participants. Participants may access data through the KHIE as well as provide data through the KHIE for access by other participants.



Section 7. Access to other health information exchanges. GOEHI may establish arrangements with other health information exchanges to allow participants access to data permitted by the GOEHI – Form 1A, or GOEHI – Form 1B.

Section 8. Recipient of Kentucky Health Information Exchange Services. ~~[(1)]~~ A health care[healthcare] provider that is participating in the KHIE ~~shall pursuant to this administrative regulation~~ qualify to become a recipient of KHIE services upon:

- ~~(1)[(a)]~~ Validation of any KHIE Go-Live transaction by the participant and the GOEHI; and
- ~~(2)[(b)]~~ Completion of:
  - ~~(a)~~ The GOEHI - Form 2A, Kentucky Health Information Exchange Go-Live Approval ~~[Document]~~ for Edge Services~~;~~ or
  - ~~(b)~~ The GOEHI - Form 2B, Kentucky Health Information Exchange Go-Live Approval ~~[Document]~~ for Web Services.

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

- (a) ~~["]~~GOEHI - Form 1A, "Governor's Office of Electronic Health Information Exchange Hospital Participation Agreement", September[May], 2012;
- (b) ~~["]~~GOEHI - Form 1B, "Governor's Office of Electronic Health Information Exchange Participation Agreement Other Providers", September[May], 2012;
- (c) ~~["]~~GOEHI - Form 2A, "Kentucky Health Information Exchange Go-Live Approval ~~[Document]~~ for Edge Services~~;~~" September[May], 2012; ~~and~~
- (d) ~~["]~~GOEHI - Form 2B, "Kentucky Health Information Exchange Go-Live Approval ~~[Document]~~ for Web Services", September[May], 2012; ~~and~~
- (e) GOEHI - Form 3, "HITSP Summary Documents Using HL7 Continuity of Care (CCD) Component", Version 2.5, July 8, 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Governor's Office of Electronic Health Information, 275 East Main Street 4WA, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

POLLY MULLINS-BENTLEY, Acting Executive Director  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 14, 2012

FILED WITH LRC: May 15, 2012 at 11 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**  
**Office of Inspector General**  
**Division of Audits and Investigations**  
**(As amended at ARRS, September 17, 2012)**

**906 KAR 1:160. Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine.**

RELATES TO: KRS 15.380, 218A.1446, 218A.240

STATUTORY AUTHORITY: KRS~~[194A.050(1);]~~ 218A.1446, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY:~~[KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.]~~ KRS 218A.1446 authorizes the Cabinet for Health and Family Services and the Office of Drug Control Policy to establish an electronic recordkeeping mechanism for monitoring the sale of any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers. KRS 218A.250 authorizes the cabinet to promulgate administrative

regulations to carry out the provisions of KRS Chapter 218A.~~[KRS 218A.1446(3) states that pursuant to administrative regulations promulgated by the Drug Enforcement and Professional Practices Branch and the Office of Drug Control Policy (ODCP), pharmacies requesting an exemption to electronic reporting may file an exemption request to the Branch and ODCP.] This administrative regulation establishes the Kentucky Electronic Methamphetamine Precursor Tracking (KEMPT) system[, and establishes the requirements for an exemption from electronic reporting].~~

Section 1. Definitions. (1) "Attempted purchase" means information regarding a transaction is entered into the KEMPT system by a dispenser of a precursor to methamphetamine and the sale is not completed because the system recommends that the transaction be denied pursuant to KRS 218A.1446(5) or (6).

~~(2) ["Branch" means the Drug Enforcement and Professional Practices Branch within the Division of Audits and Investigations, Office of the Inspector General, Cabinet for Health and Family Services.~~

~~(3)]~~ "Cabinet" is defined by KRS 218A.010(3).

~~(3)[(4)]~~ "Dispenser of a precursor to methamphetamine" means a registered pharmacist, pharmacy intern, or pharmacy technician who lawfully ~~sells~~dispenses a nonprescription compound, mixture, or preparation containing a detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

~~(4)[(5)]~~ "Kentucky Electronic Methamphetamine Precursor Tracking" or "KEMPT" means the electronic recordkeeping mechanism ~~used~~contracted for by the Office of Drug Control Policy to monitor the sale of a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

~~(5)[(6)]~~ "Law enforcement officer" means a:

(a) Drug enforcement agent designated by the Cabinet for Health and Family Services pursuant to KRS 218A.240(2);

(b) Kentucky peace officer certified pursuant to KRS 15.380 as a:

- 1. Kentucky State Police officer;
- 2. City, county, or urban-county police officer;
- 3. Deputy sheriff; or
- 4. State or public university safety and security officer;
- (c) Certified or full-time peace officer of another state; or
- (d) Federal peace officer.

~~(6)[(7)]~~ "ODCP" means the Office of Drug Control Policy within the Kentucky Justice and Public Safety Cabinet.

~~(7)[(8)]~~ "Precursor to methamphetamine" means a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

~~(8)[(9)]~~ "Purchaser" means an individual age eighteen (18) or older who purchases, or attempts to purchase, a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

Section 2. Electronic Reporting. ~~(1)[Unless granted an exemption pursuant to Section 3(5) of this administrative regulation or using an alternative electronic reporting mechanism approved pursuant to KRS 218A.1446(2)(b);]~~ The following information shall be entered in the KEMPT system upon the purchase, or attempted purchase, of a precursor to methamphetamine:

(a) Date of transaction pursuant to KRS 218A.1446(2)(b), which is entered manually or recorded automatically by KEMPT;

(b) Identifying information regarding the purchaser pursuant to KRS 218A.1446(2)(b) and a government-issued photo identification number; and

(c) Amount and name of the product dispensed pursuant to KRS 218A.1446(2)(b).

(2) The ODCP~~[cabinet]~~ shall be solely responsible for the security of the transaction information required by subsection (1) of this section after a dispenser of a precursor to methamphetamine transmits the information.

(3) The ODCP~~[cabinet]~~ shall provide a toll-free telephone num-

ber:

(a) For technical support available to a dispenser of a precursor to methamphetamine twenty-four (24) hours per day, seven (7) days per week; and

(b) For customer service available to a purchaser who has an inquiry regarding a transaction, Monday through Friday, 8 a.m. to 4:30 p.m., except for state recognized holidays.

(4) ~~A pharmacy may use a hardcopy signature logbook consisting of each purchaser's signature and transaction number to meet the requirement for obtaining electronic signatures. [A pharmacy that uses the KEMPT system shall be exempt from maintaining a written log of the information required by KRS 218A.1446(2)(b).]~~

(5) ~~A pharmacy that is not able to secure an electronic signature shall maintain a hardcopy signature logbook consisting of each purchaser's signature and transaction number.]~~

Section 3. Extension for Reporting Information and Exemption from Electronic Reporting. (1) If a dispenser of a precursor to methamphetamine experiences mechanical or electronic failure, the ODCP[cabinet] shall grant an extension for reporting the information required by Section 2(1) of this administrative regulation.

(2) To request an extension for reporting information required by Section 2(1) of this administrative regulation, a dispenser of a precursor to methamphetamine shall submit a request to the ODCP[cabinet] that:

(a) States the reason for the request;

(b) Identifies the period of time for which the extension is necessary, not to exceed seventy-two (72) hours; and

(c) Is submitted:

1. Within twenty-four (24) hours of discovery of the circumstances resulting in the need for an extension request; or

2. On the day following a holiday or weekend if the discovery occurs on a day that ODCP[cabinet] offices are closed.

(3) If a transaction occurs during the time period in which a request described in subsection (2) of this section is pending, a dispenser of a precursor to methamphetamine shall:

(a) Maintain a written log or ~~an alternative~~ electronic record-keeping mechanism approved pursuant to KRS 218A.1446(2)(b) of the information required by Section 2(1) of this administrative regulation; and

(b) Enter the information in the KEMPT system within seventy-two (72) hours of the system becoming operational.

(4) The ODCP[cabinet] shall acknowledge receipt of a request described in subsection (2) of this section within:

(a) Twenty-four (24) hours ~~offer~~ receipt; or

(b) On the day following a holiday or weekend if ODCP[cabinet] offices are closed. ~~[(5) An exemption from the electronic reporting requirement described in Section 2 of this administrative regulation shall be granted upon receipt by the branch and ODCP of a pharmacy's written request for exemption if the request complies with KRS 218A.1446(3)(c).]~~

Section 4. Request for KEMPT Reports. (1) The ODCP[cabinet] shall provide a KEMPT report:

(a) To a law enforcement officer whose duty is to enforce the laws of this state, another state, or of the United States relating to drugs;

(b) To a pharmacy;

(c) Pursuant to a subpoena issued by a grand jury; or

(d) Pursuant to a court order issued by a criminal court.

(2) The ODCP[cabinet] shall not provide a KEMPT report to a person or entity that is not authorized in accordance with subsection (1) of this section to receive the report.

(3) ~~A law enforcement officer or pharmacy may submit an electronic request for a KEMPT report at the following Web site: <http://chfs.ky.gov/kempt>.~~

(4) A KEMPT report provided to a pharmacy shall not identify the dispenser of a precursor to methamphetamine or the dispensing pharmacy.

Section 5. Denial of Transactions and Overrides. (1) If an individual attempts to purchase a precursor to methamphetamine in violation of the thirty (30) day or one (1) year restrictions~~[nine (9)~~

~~gram restriction]~~ established by KRS 218A.1446(5), or the age restriction established by KRS 218A.1446(6), the KEMPT system shall:

(a) Notify the pharmacy at the time of sale; and

(b) Recommend that the pharmacy deny the transaction.

(2) The KEMPT system shall provide an override feature for use by a dispenser of a precursor of methamphetamine to allow completion of the sale.

Section 6. Compliance Date. ~~[Unless granted an exemption pursuant to Section 3(5) of this administrative regulation or using an alternative electronic reporting mechanism approved pursuant to KRS 218A.1446(2)(b),]~~ All pharmacies that dispense precursors to methamphetamine shall:

(1) Comply with the electronic reporting requirements of Section 2 of this administration regulation within (30) days of the date that a pharmacy has access to KEMPT; or

(2) Submit a request to ~~the branch and~~ ODCP for an extension if the pharmacy is not able to comply with the electronic reporting requirements on the date the pharmacy has access to KEMPT.

MARY REINLE BEGLEY, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 13, 2012

FILED WITH LRC: July 13, 2012 at 11 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 Income Support  
Child Support Enforcement  
(As Amended at ARRS, September 17, 2012)**

**921 KAR 1:001. Definitions for 921 KAR Chapter 1.**

RELATES TO: KRS 194A.050, 205.710-205.800, 403.210-403.240, 405.440, 405.520, 407.5101-407.5902, 45 C.F.R. 302.31, 302.33-302.38, 302.50-302.54, 302.56, 302.60, 302.80, 303.2-303.4, 303.6, 303.8, 303.15, 303.30-303.31, 303.70, 303.100-303.102, 42 U.S.C. 651 et seq.

STATUTORY AUTHORITY: KRS 194A.050, 205.710-205.800, 405.440, 405.520, 42 U.S.C. 651 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050 ~~requires~~provides that the Cabinet for Health and Family Services to promulgate administrative regulations to administer the Child Support Enforcement Program (CSEP)[(CSP)]. This administrative regulation ~~establishes~~sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the Child Support Enforcement Program.

Section 1. Definitions of terms utilized in administrative regulations relating to the Child Support Enforcement Program are as follows:

(1) **"Administrative hearing" means the process whereby a parent's objections to administrative determinations of the cabinet are heard by an impartial hearing officer upon a timely request.**

(2) "Arrearage" means the total unpaid support obligation established by judicial or administrative order owed by a noncustodial parent~~;~~ or obligor.

(3) **"Assigned support obligation" means any child support, spousal support, or medical support obligation assigned to the state.**

(4)~~[(2)]~~ "Assignment of rights" means the written transfer of rights to any child support,~~[any]~~ medical support, or spousal support obligation to the state.

(5)~~[(3)]~~ **"Assigned support obligation" means any child support, spousal support, or medical support obligation assigned to the state.** (4) "Authority to collect" means the nonpublic assistance custodial parent's authorization for the Cabinet for Health and Family Services to collect child support, medical support, or spousal support owed on behalf of the family for whom the

cabinet is providing child support services.

~~(6) [(5)]~~ "Central registry" means a centralized office within the state agency responsible for:

(a) Receiving and distributing an incoming intergovernmental request; and

(b) Responding to an inquiry received from another state, tribe, or agency regarding an intergovernmental case.

~~(7) [(6)]~~ "Cold check" means insufficient funds for the check tendered, stop payment order on the check tendered, or closed account.

~~(8) [(7)]~~ "CSEP" ["CSP"] means the Child Support Enforcement Program.

~~(9) [(8)]~~ "Custodial parent" means either a mother or father of a dependent child who is living in the home with the child.

~~(10) [(9)]~~ "Default" means the noncustodial parent's, or obligor's, failure to return a financial statement or to keep an appointment, and the noncustodial parent's, or obligor's, income and assets cannot be obtained and verified from another source to determine a support obligation based on the Kentucky child support guidelines. ~~[(10) "Administrative" Dispute] [hearing] means the process whereby a parent's objections to administrative determinations of the cabinet are heard by an impartial hearing officer upon a timely request.~~

(11) "Distribution" means either a disbursement of a collection to the family or an allotment of various portions of the collection to the state and federal government for the reimbursement of the share of the K-TAP assistance payment to the family, or money expended for a child in the custody of the state.

(12) "Escrow" means the difference between the amount of the assistance payment for the month in which the amount of the collection is used to redetermine eligibility and either the monthly obligation or the amount collected, whichever is less.

(13) "Excess collections" means the amount of the collection which exceeds the monthly obligation amount.

(14) "Income" means earnings or other periodic entitlements to money from any source and any other property subject to withholding for support as described in KRS 205.710(10), (11), (15) and 403.212(2).

(15) "Initiating agency" means a State or Tribal IV-D agency or an agency in a country, as defined in 45 C.F.R. 303.1, in which an individual has applied for or is receiving IV-D services.

(16) "Intergovernmental IV-D case" means a IV-D case in which the noncustodial parent lives or[and/or] works in a different jurisdiction than the custodial parent and the child or children[children] that have[has] been referred by an initiating agency to a responding agency for services, including:

(a) Any[- An intergovernmental IV-D case may include any] combination of referrals between states, tribes and countries; or

(b) Cases[- An intergovernmental IV-D case also may include cases] in which a state agency is seeking only to collect support arrearages, whether owed to the family or assigned to the state.

~~(17) ["Initiating state" means the state that initiates child support activity on behalf of a child whose parent resides outside the child's state of residence or a state in which a proceeding is filed for forwarding to a responding state. (16)] "Kentucky Transitional Assistance Program (K-TAP)" means[,] Kentucky's Temporary Assistance for Needy Families (TANF) [Program means a] money payment program for children who are deprived of parental support or care due to:~~

(a) Death, continued voluntary or involuntary absence, physical or mental incapacity of a parent; or

(b) Unemployment of at least one (1) parent if[when] both parents are in the home.

~~(18) [(17)]~~ "Location" means the determination of a parent's location, income, assets, property, or debt as provided by KRS 205.730(5).

~~(19) [(18)]~~ "Long-arm statutory authority" means a state statute which provides for state jurisdiction over a nonresident.

~~(20) [(19)]~~ "Noncustodial parent, or obligor" means either a mother or father of a dependent child who is not living in the home with the child, as well as a description of[- This term may also be used to describe] the alleged father in a paternity case.

(21) "Nonparental custodian" means:

(a) An adult who has been court appointed as the custodian of a minor child and is living in the home with the child; or

(b) Any other person or entity that may have standing to request services on behalf of a child.

~~(22) [(20)]~~ "Notice of monthly support obligation" means an administrative order issued by the cabinet as specified in KRS 405.440 notifying the noncustodial parent, or obligor, of the child support and medical support obligation and of the noncustodial parent's, or obligor's right to request an administrative[a] hearing.

~~[(22) [(21)]]~~ ["Nonparental custodian" means:

~~(a) An adult who has been court appointed as the custodian of a minor child and is living in the home with the child; or~~

~~(b) Any other person or entity that may have standing to request services on behalf of a child.]~~

~~(23) [(22)]~~ "Obligor" means that individual who is ordered to pay child support, spousal support, medical support, or health care coverage.

~~(24) [(23)]~~ "Offset" means to set aside federal or state, or both, income tax refunds or nonexempt federal payments due a noncustodial parent, or obligor, as a means of collecting past-due child support.

~~(25) [(24)]~~ "Order and notice to withhold income for child support" means an administrative order issued by the cabinet, or a judicial order to an obligor's employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of any arrearage, and if[when] applicable, the employee-paid share of the cost of health insurance coverage for a dependent child.

~~(26) "Postreview challenge period" means the thirty (30) days following the date of the notice of adjustment or the notice of no change following the review for modification of the child support order.~~

~~(27) [(25)]~~ "Preoffset notice" means a letter notifying a noncustodial parent, or obligor, who owes an arrearage that the arrearage has been certified for state and federal tax refund intercept, state tax refund intercept only, passport denial or revocation, administrative offset of nonexempt federal payments, offset of lottery winnings, and to certified consumer credit reporting agencies.

~~[(27) [(26)]]~~ ["Postreview challenge period" means the thirty (30) days following the date of the notice of adjustment or the notice of no change following the review for modification of the child support order.]

~~(28) [(27)]~~ "Public assistance" means the receipt of K-TAP, including child care or work subsidies and vouchers,[,] Medicaid,[,] or foster care benefits.

~~(29) "Responding agency" means the agency that is providing IV-D services in response to a referral from an initiating agency in an intergovernmental IV-D case.~~

~~(30) [(28)]~~ "Responding state" means the state that is managing the child support case received from an initiating state or a state to which a proceeding is forwarded for filing. ~~(29)]~~ "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children of that individual, even if child support is not part of the order.

~~(31) [(30)]~~ "Unassigned arrearage" means any arrearage that accrues that is not assigned to the Cabinet for Health and Family Services.

STEVEN P. VENO, Deputy Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 13, 2012

FILED WITH LRC: July 13, 2012 at 11a.m.

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Income Support**  
**Child Support Enforcement**  
**(As Amended at ARRS, September 17, 2012)**

**921 KAR 1:380. Child Support Enforcement Program application and intergovernmental[~~interstate~~] process.**

RELATES TO: KRS 205.705, 205.710-205.800, 205.992, 213.046(4), 403.211, 405.430(5), 405.520, 405.467, 406.021, 406.025, 407.5101-407.5902, 610.170, 45 C.F.R. 301.1, 302.30, 302.31, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.15, 303.30-303.31, 303.69, 303.70, 42 U.S.C. 651-654, 657, 663, 666

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 (1), 205.795, and 405.520 authorize the secretary to promulgate administrative regulations to operate the Child Support Enforcement Program (CSEP) in accordance with federal law and regulations. 45 C.F.R. 303.2 requires the child support application process to be accessible to the public. This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an intergovernmental[~~interstate~~] case.

Section 1. Child Support Enforcement Case Types. (1) Kentucky Transitional Assistance Program (K-TAP) or Kinship Care.

(a)1. An applicant for, or recipient of, K-TAP or Kinship Care shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1) and 921 KAR 2:006.

2. The assignment shall:

a. Include members of the case for whom support rights apply; and

b. Be completed when applying for K-TAP or Kinship Care benefits using the application form incorporated by reference in 921 KAR ~~2:040~~3:030.

(b) An applicant or recipient shall cooperate in all phases of child support activity that shall, if known, include:

1. The name of the noncustodial parent or obligor;

2. The Social Security number of the noncustodial parent or obligor;

3. Information to assist in the:

a. Location of the noncustodial parent or obligor;

b. Enforcement of a child support order; or

c. Review or modification of a child support order;

4. Establishment of:

a. Paternity, if paternity has not been established; and

b. An assigned support obligation;

5. Enforcement of:

a. An assigned support obligation; and

b. A spousal support order if the cabinet is collecting for a child who resides with the spouse or former spouse; and

6. Forwarding any child support payment received to the cabinet's centralized collection unit.

(2) Foster Care.

(a) The CSEP shall collect and disburse child support on behalf of a child for whom:

1. The state is making a foster care maintenance payment as required by 42 U.S.C. 657 and an assignment of rights has been made; or

2. The cabinet has custody, and there is an order for the child's parent or parents to pay child support to the cabinet pursuant to KRS 610.170.

(b) The child's benefit worker with responsibility for the foster care child shall:

1. Cooperate with the CSEP;

2. Review and approve a foster care child support referral;

3. Complete a change of status if a change occurs that relates to the child support process; and

4. Forward to the CSEP a copy of the child support court documents.

(c) If a child with special needs is adopted in accordance with

922 KAR 1:100 and reenters the custody of the cabinet, the cabinet shall:

1. Determine that good cause exists in accordance with Section 2(3) of this administrative regulation; or

2. Establish a child support obligation if:

a. A child with special needs adopted in accordance with 922 KAR 1:100 has reentered the custody of the cabinet due to the child's maltreatment or abandonment; and

b. The commissioner or designee recommends the establishment of child support.

(3) Medicaid only.

(a) If a Medicaid-only referral is made, the CSEP shall obtain the following information, if available:

1. Medicaid case number;

2. Name of the noncustodial parent or obligor;

3. Social Security number of the noncustodial parent or obligor;

4. Name and Social Security number of the child;

5. Home address of the noncustodial parent or obligor;

6. Name and address of the noncustodial parent or obligor's place of employment; and

7. Whether the noncustodial parent has a health insurance policy and, if so, the policy name and number and name(s) of the person(s) covered.

(b) An application for Medicaid shall include an assignment of rights for medical support, pursuant to 907 KAR 1:011, Section 9, which shall be completed by using the application form incorporated by reference in 921 KAR 3:030.

(c) Except for a custodial parent who is pregnant or in her postpartum period, pursuant to 907 KAR 1:011, a custodial parent shall cooperate in all phases of medical support activity.

(d) A Medicaid-only recipient desiring full child support services, in addition to the medical support services, shall complete and submit to the CSEP the CS-140, Assignment of Rights and Authorization to Collect Support.

(4) Nonpublic Assistance.

(a) In accordance with KRS 205.721, the CSEP shall make child support services available to any individual who:

1. Assigns rights for medical support only;

2. Applies for services pursuant to paragraph (c) of this subsection; or

3. Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance.

(b) The CSEP shall notify the family no longer eligible for public assistance, within five (5) working days, that child support services shall continue unless the CSEP is notified to the contrary by the family.

(c) Application Process for a Nonpublic Assistance Individual.

1. Upon the request of a nonpublic assistance applicant, the CSEP shall give an application packet to the applicant.

2. If the request is:

a. Made in person, the packet shall be provided the same day; or

b. Not made in person, the packet shall be sent to the applicant within five (5) working days of the request.

3. The application packet shall include the:

a. CS-33, Non-K-TAP Application;

b. CS-168, Application for Direct Deposit; and

c. CS-11, Authorization and Acknowledgement of No Legal Representation.

4. In order to receive child support services, the applicant shall complete and return the:

a. CS-33, Non-K-TAP Application; and

b. CS-11, Authorization and Acknowledgement of No Legal Representation.

(d) Except for a ~~putative father and~~ location-only case, services provided to a nonpublic assistance client through the CSEP shall be those services listed in Section 2 of this administrative regulation.

(e) If a case involves a putative father, services provided shall be those identified in Section 2(1)(~~b~~) and (~~e~~) of this administrative regulation.

(f) The CSEP shall obtain the following information from a nonpublic assistance applicant, if available:

1. Name, date of birth, and Social Security number of the child;

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

2. Name of the custodial and noncustodial parent or obligor;
3. Social Security number of the custodial and noncustodial parent or obligor;
4. Date of birth of the custodial and noncustodial parent or obligor;
5. Home address or last known address of the custodial and noncustodial parent or obligor; and
6. Name and address of the custodial and noncustodial parent's or obligor's employer or last known employer.

Section 2. General Services and Good Cause for All Case Types. (1) The CSEP shall provide child support services for a case type described in this administrative regulation in accordance with 42 U.S.C. 654. The services shall include:

- (a) Location of the noncustodial parent or obligor;
- (b) Location of the custodial parent for establishment of paternity;
- (c) Establishment of paternity based upon the receipt of either:
  1. A court order; or
  2. An affidavit from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;
- (d) Establishment of a child support or medical support obligation by:
  1. Petitioning the court or administrative authority to establish child support pursuant to the Kentucky Child Support Guidelines; and
  2. Petitioning the court or administrative authority to include private health insurance pursuant to 45 C.F.R. 303.31(b)(1) in new or modified court or administrative orders for support; or
  3. Petitioning the court or administrative authority to include cash medical support in new or modified orders until such time as health insurance that is accessible and reasonable in cost, as defined in KRS 403.211(8)(a) and (b), becomes available;

(e) Enforcement of a:

1. Child support or medical support obligation; and
2. Spousal support obligation if the:
  - a. Client is the spouse or ex-spouse;
  - b. Child lives with the spouse or ex-spouse; and
  - c. Cabinet is collecting support on behalf of the child;

(f) Review and modification of an assigned support obligation in accordance with 921 KAR 1:400;

(g) Collection and disbursement of current and past-due support payments resulting from an assigned support obligation, less an annual twenty-five (25) dollar fee assessed against a custodial parent who has never received assistance, as defined in 42 U.S.C. 654(6)(b)(ii), during each Federal fiscal year in which \$500 has been disbursed for the case; and

(h) Submit application to health plan administrator to enroll the child if the parent ordered to provide health insurance coverage is enrolled through the insurer and has failed to enroll the child.

(2) The CSEP shall open a case and determine needed action and services within twenty (20) calendar days of receipt of a:

- (a) Referral from the public assistance agency;
  - (b) Foster care referral; or
  - (c) Nonpublic assistance application in accordance with Section 1(4)(c) of this administrative regulation.
- (3) Good cause.

(a)1. If an applicant or client states that good cause for non-cooperation exists, the applicant or client shall have the opportunity to establish a claim pursuant to 921 KAR 2:006.

2. Evidence for determination of good cause shall be pursuant to 921 KAR 2:006.

3. For a foster care child, good cause for nonenforcement of child support shall be determined to exist if evidence and criteria are met pursuant to 921 KAR 2:006 or 922 KAR 1:530.

(b) If the CSEP has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1), the CSEP shall not attempt location, establishment, modification, or enforcement of an assigned support obligation.

Section 3. Parent Locator Service and Associated Fee for Service. (1) Unless the cabinet has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS

205.730(1) or 921 KAR 2:006, Section ~~25~~<sup>24</sup>, location shall be attempted for a:

- (a) Public assistance case referred to the CSEP; or
- (b) Nonpublic assistance case for which child support services are being provided.

(2) The CSEP shall attempt to locate a noncustodial parent or obligor and the noncustodial parent's or obligor's employer, sources of income, assets, property, and debt, if necessary, for a public assistance case or nonpublic assistance case assigned to the CSEP pursuant to KRS 205.712 and 205.730(5) 45 C.F.R. 303.69 or 303.70.

(3) In accordance with KRS 205.730(4), location services shall be provided in a parental kidnapping case.

(4) The CSEP shall provide location services to a putative father in accordance with KRS 205.730(2) and (4).

Section 4. ~~Intergovernmental~~<sup>Interstate</sup> Process for Child Support Enforcement Services. In accordance with KRS 205.712, 407.5101-407.5902, and 45 C.F.R. 303.7, the CSEP shall:

(1) Extend to an ~~intergovernmental~~<sup>interstate</sup> IV-D~~interstate~~ child support case the same services available to an intrastate case; and

(2) Provide ~~a responding~~<sup>an</sup> agency~~in a responding state~~ with sufficient and accurate information and documentation on the appropriate ~~intergovernmental~~<sup>interstate</sup> transmittal forms, the:

- (a) CS-98, General Testimony;
- (b) CS-99, Affidavit in Support of Establishing Paternity; and
- (c) CS-100, Uniform Support Petition.

Section 5. Public Awareness. The effort, pursuant to KRS 205.712(2)(g), to publicize the availability of the CSEP's services and encourage their use may include:

- (1) Public service announcements;
- (2) Posters;
- (3) Press releases;
- (4) Videos;
- (5) Annual reports;
- (6) Newsletters;
- (7) Mail inserts;
- (8) Pamphlets;
- (9) Letters; and
- (10) Internet.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "CS-11, Authorization and Acknowledgement of No Legal Representation", edition ~~10/12~~<sup>4/10</sup>;
- (b) "CS-33, Non-KTAP Application", edition ~~10/12~~<sup>4/10</sup>;
- (c) "CS-98, General Testimony", edition ~~10/12~~<sup>4/09</sup>;
- (d) "CS-99, Affidavit in Support of Establishing Paternity", edition 1/09;
- (e) "CS-100, Uniform Support Petition", edition 1/09;
- (f) "CS-140, Assignment of Rights and Authorization to Collect Support", edition ~~10/12~~<sup>4/10</sup>; and
- (g) "CS-168, Application for Direct Deposit", edition 1/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENNO, Deputy Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 13, 2012

FILED WITH LRC: July 13, 2012 at 11 a.m.

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Income Support**  
**Child Support Enforcement**  
**(As Amended at ARRS, September 17, 2012)**

**921 KAR 1:410. Child support collection and enforcement.**

RELATES TO: KRS 13B.010(2), 15.055, 67A.620, 95.620(1), 95.878, 131.570, 161.700(1), 186.570(2), 205.594, 205.595, 205.710-205.802, 237.110(4), 403.211-403.215, 405.060(2), (3), 405.405-405.991, 407.5101-407.5902, 427.120, 427.125, 31 C.F.R. 285.1 and, 285.3, 45 C.F.R. 302.32-302.36, 302.60-302.80, 303.3, 303.6, 303.31, 303.32, 303.35, 303.70, 303.72, 303.100-303.102, 303.104, 15 U.S.C. 1673, 42 U.S.C. 652, 654, 659, 664, 666(a)(1)-(4), (6)-(12), (14)-(19), (b), and, (c)

STATUTORY AUTHORITY: KRS 15.055(2), 186.570(2), 194A.050(1), 205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520, 42 U.S.C. 652, 653, 654, 656, 659, 666(a), (b), and, (c), 669A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 666 requires states to have laws that prescribe procedures to improve effectiveness of child support enforcement. KRS 205.712(2)(o) requires the Cabinet for Health and Family Services to collect and enforce child support obligations and authorizes the cabinet to promulgate administrative regulations to implement its duties. This administrative regulation establishes procedures for collection and enforcement of child support.

Section 1. Definitions. "Lump sum payment of any kind" means a lump sum payment of earnings as defined in KRS 427.005.

Section 2. Collection. (1) Income withholding shall be used for the collection of a support obligation or health insurance coverage in an order being enforced by the Child Support Enforcement (CSE) program.

(2) The cabinet shall notify an employer or other income source of a request for income withholding by sending, certified mail, returned receipt requested, the CS-89, Income Withholding for Support, and CS-72, National Medical Support Notice:

(a) Within fifteen (15) calendar days of a request for income withholding; or

(b) Within two (2) working days after entry of an obligor into the State Directory of New Hires.

(3) The employer or other income source shall:

(a) Implement income withholding no later than the first pay period that occurs after fourteen (14) working days following the date of the CS-89; and

(b) Transfer the CS-72 to the employer's health plan administrator within twenty (20) business days after receipt of the notice.

(4) The employer or other income source, in accordance with KRS 405.465(4) and (6)(a), may deduct the sum of one (1) dollar for each payment made pursuant to the order.

(5) The total amount to be withheld ~~shall~~may not exceed the maximum amount allowed under 15 U.S.C. 1673(b).

(6) In the case of an initial withholding, the cabinet shall send the obligor a copy of the CS-89 in order to notify the obligor that the income withholding:

(a) May be contested by requesting an administrative hearing pursuant to 921 KAR 1:430, in accordance with KRS 405.467(4); and

(b) Shall apply to the current and any subsequent employer.

(7) The health plan administrator shall notify the obligor and the cabinet of the health insurance coverage within forty (40) working days of receipt of the CS-72.

(8) If an obligor terminates employment, the employer or other income source shall notify the cabinet of the obligor's last known address and name of the new employer, if known, in accordance with KRS 405.465(5).

(9) An obligor shall inform the cabinet of any changes in:

(a) A current employer or source of income;

(b) Access to health insurance; and

(c) Residential or mailing address.

(10) If an obligor transfers or assigns income or income-producing property after receipt of notification of a child support obligation, the cabinet shall take action pursuant to KRS 405.060.

(11) If an arrearage only amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by court or administrative order.

(12) The employer or other income source shall forward:

(a) The support obligation payment to the state disbursement unit in the child support agency within seven (7) working days from the date an amount is withheld; or

(b) The medical insurance premium to the health insurance carrier or notify the cabinet prior to payment if more than one (1) option is available under a plan within twenty (20) business days.

(13) The employer or other income source shall include on the transmittal to the cabinet the obligor's:

(a) Name;

(b) Social Security number; and

(c) Cabinet-assigned identification number.

(14) The employer or other source of income shall not be required to change payroll frequency but shall withhold:

(a) At least once monthly; and

(b) May combine withheld amounts from more than one (1) obligor's income in a single payment to the cabinet, if the amount attributable to each obligor is identified by:

1. Name;

2. Social Security number; and

3. Cabinet-assigned identification number.

(15) (a) An employer with twenty (20) or more employees shall provide written notification of a lump sum payment of any kind of \$150 or more to be made to an employee who is currently under an income withholding order, in accordance with KRS 405.465.

1. The written notice to the cabinet shall include the following:

a. Name of the employee;

b. Social Security number of the employee;

c. Amount of the lump sum payment; and

d. Intended payment date.~~;~~and

2. The notice may include multiple employees on one (1) written notification if the information in accordance with this subparagraph 1 of this paragraph is provided for each employee.

(b) Upon receipt of notification of a lump sum payment, Child Support Enforcement shall determine if the employee owes an arrearage on a support obligation enforced by the cabinet.

(c) If the employee owes no arrearage, Child Support Enforcement or its designee may notify the employer to release the lump sum payment to the employee.

(d) If the employee owes an arrearage, pursuant to paragraph (b) of this subsection, Child Support Enforcement or its designee shall initiate:

1. A court order to the employer in accordance with KRS 405.465; or

2. An administrative order in accordance with KRS 405.470.

(e) If Child Support Enforcement or its designee does not contact the employer, the employer shall:

1. Hold the lump sum for thirty (30) calendar days, in accordance with KRS 405.465(6)(a), from the projected date of its release; and

2. Release the lump sum payment to the employee after the 30th calendar day, unless the employer has received from Child Support Enforcement or its designee a court order or an administrative order to withhold any portion of the lump sum payment.

(16) If an obligor receives unemployment compensation benefits, the cabinet shall:

(a) Through an agreement with the Education Cabinet, Office of Employment and Training, submit a CS-76, Unemployment Insurance Notice of Withholding, to the Department of Unemployment Insurance within the Education Cabinet to collect a child support payment from an obligor receiving unemployment compensation.

(b) Notify an obligor with a CS-73, Unemployment Insurance Letter, along with a copy of the CS-76, Unemployment Insurance

Notice of Withholding that:

1. Current child support obligation or delinquency is owed;
2. The cabinet has completed a CS-76 to order withholding of:
  - a. Fifty (50) percent of the unemployment benefit; or
  - b. The amount of the assigned support obligation, whichever is less; and
3. The obligor may contest the withholding by requesting an administrative hearing as specified in 921 KAR 1:430.

Section 3. Support Collection by Methods Other than Collection through Income Withholding. (1) Federal income tax refund offset and federal administrative offset.

(a) A public assistance case shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;
2. An assignment of support to the cabinet;
3. An arrearage of at least \$150; and
4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case, for which the cabinet is providing services, involving past-due child support, a specific dollar amount of medical support, or spousal support shall qualify for offset if the:

1. Cabinet is enforcing a court-ordered or administratively-established support obligation;
2. Cabinet verifies accuracy of the obligor's name and Social Security number;
3. Nonpublic assistance arrearage owed is equal to or greater than \$500, exclusive of fees, court costs, or other non-child support debt; and
4. Cabinet has the following:
  - a. A copy of the current support order;
  - b. A copy of the payment record; and
  - c. The custodial parent's last known address.

(c) 1. If a case is submitted for federal tax refund offset, the case may be subject to federal administrative offset of nonexempt federal payments pursuant to 42 U.S.C. 664 and 31 C.F.R. 285.1 and 285.3.

2. Nonexempt federal payments shall be denied to individuals owing a child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(d) An Advance Notice of Intent to Collect Past Due Support, Form CS-122, shall be sent to the obligor of the intent to intercept the tax refund and the administrative offset to be applied to the obligor's account.

**[1.]** The notice shall inform noncustodial parents:

**1.[a.]** Of their right to contest the fact that past due support is owed or the amount of past due support by requesting an administrative hearing;

**2.[b.]** Of the procedures and timeframe for contacting CSE to request an administrative hearing;

**3.[c.]** That the hearing shall be conducted by the submitting state unless the noncustodial parent requests the hearing be conducted by the state with the order upon which the referral for offset is based; and

**4.[d.]** That, in the case of a joint return, the Secretary of the U.S. Treasury shall notify the noncustodial parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse.

(2) State income tax refund offset.

(a) A public assistance case and nonpublic assistance case shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;
2. An assignment of support to the cabinet or the Child Support Enforcement program is providing services involving past due child support, a specific dollar amount of medical support, or spousal support;
3. An arrearage of at least \$150; and
4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) In accordance with KRS 131.570, an advance written notice shall be sent to the obligor that he may contest the accuracy of a past due amount by requesting an administrative hearing as speci-

fied in 921 KAR 1:430.

(3) Tort claim settlements and state administrative offset. The cabinet shall:

(a) Identify a child support case for state administrative offset, including tort claim settlements, if a child support case meets the criteria specified in subsection (2)(a) or (b) of this section; and

(b) Notify the Finance and Administration Cabinet to offset administrative payments, including tort claim settlements, in accordance with KRS 205.712(17), for a case identified in paragraph (a) of this subsection.

(4) Financial Institution Data Match (FIDM). The cabinet shall:

(a) Use the following criteria to identify a case for seizure of assets:

- 1.a. Assignment of support is made to the cabinet; or
- b. Child Support Enforcement program is providing support services; and

2. The obligor owes past-due support~~[has failed to make child support payments]~~ in an amount equal to or greater than one (1) month's support obligation~~[support payable for one (1) month.]~~

(b) Issue a CS-68, Order to Withhold and Deliver, and CS-69, Answer to Withhold and Deliver, to a financial institution holding the obligor's account or accounts;

(c) Issue a CS-68 and CS-121, Noncustodial Parent's Answer to Withhold and Deliver, to the obligor within two (2) working days:

1. After both of the forms specified in paragraph (b) of this subsection are issued to the financial institution; and

2. To notify the obligor that the funds in the account with the financial institution may be retained by requesting an administrative hearing to contest the Order to Withhold and Deliver in accordance with 921 KAR 1:430;

(d) Notify an obligor that to retain the funds in the account with the financial institution, an obligor shall take one (1) of the following actions within twenty (20) calendar days from the date of receipt of a CS-68:

1. Pay the total arrearage;
2. Request and administrative hearing to contest the CS-68; or
3. Post a bond satisfactory to the cabinet; and

(e) After an administrative hearing, if a case does not qualify for the withhold and deliver process, send a CS-70, Release of Order to Withhold and Deliver to:

1. The obligor; and
2. The financial institution.

(5) If a seizure of assets request is identified, as specified in subsection (4)(a) of this section, and is initiated from outside the commonwealth as a result of a FIDM, pursuant to 42 U.S.C. 666(a)(17), the cabinet shall comply with KRS 205.712, 407.5305, and 407.5507 to issue:

(a) A CS-68 and a CS-69 to a financial institution holding the obligor's account or accounts;

(b) A CS-68 and a CS-121, Noncustodial Parent's Answer to Withhold and Deliver, to the obligor within two (2) working days after both of the forms specified in paragraph (a) of this subsection are issued to the financial institution; and

(c) A CS-70 to the financial institution. if the initiating state's request is withdrawn.

Section 4. Enforcement Actions. (1) Liens.

(a) The cabinet shall file a lien on an obligor's interest in personal or real property, in accordance with KRS 205.745, if:

1. The obligor owes an arrearage equal to or greater than one (1) month's obligation;
2. The child support has been assigned to the cabinet;
3. The property has been identified and located; and
4. The value of the property exceeds the costs related to filing the lien.

(b) To file a lien, the cabinet shall:**[f.]**

1. Issue a CS-85, Notice of Lien, for property within or outside Kentucky in accordance with KRS 205.745 or 205.7785; and

2. Provide a CS-119, Noncustodial Parent's Notice of Lien, along with a copy of the CS-85 to the obligor notifying him that:

a. The obligor may contest the lien as specified in 921 KAR 1:430;

b. A transfer of property in order to avoid payment shall be considered an act of fraud, in accordance with KRS 405.060(2);

and

c. If the obligor makes full payment of the arrearage, including interest, penalties, and fees, a CS-120, Release of Lien, shall be provided to the obligor.

(c) To release a lien, the cabinet shall provide a CS-120, Release of Lien, to the obligor.

(2) License and certificate denial, suspension, or revocation.

(a) If an obligor owes an arrearage equal to or greater than six (6) months of an assigned support obligation or fails to comply with a subpoena or warrant relating to paternity or child support proceedings, as established in KRS 205.712(9):

1. The cabinet shall forward the name of the individual to a board of licensure or board of certification for the notification of the denial, revocation, or suspension of a driver's license, professional license or certification, occupational license or certification, recreational license, or sporting license.

2. The denial or suspension shall remain in effect until:

a. The obligor makes full payment of the arrears;

b. Payments on the past due child support are made in accordance with a court order, an administrative order, or Payment Agreement, CS-78;

c. The obligor complies with the subpoena or a warrant relating to paternity or child support proceedings has been removed;

d. The obligor provides supporting documentation of extenuating circumstances that is accepted by the cabinet; or

e. The appeal of the denial or suspension is upheld and the license is reinstated.

3. The cabinet shall send to the obligor a CS-44, Notice of Intent to Request Denial or Suspension, which includes:

a. A section for an Answer to Notice of Intent providing the obligor with notice of the obligor's right to request an administrative hearing contesting the action as specified in 921 KAR 1:430; and

b. Notification that the CS-63, Notice to Licensing/Certification Board or Agency shall be rescinded if an action specified in paragraph (a)2 of this subsection has been taken.

4. The cabinet shall send to the issuing agency or board of licensure or certification a CS-63, if an action in paragraph (a)2 of this subsection has not been taken.

5. The cabinet shall send to the issuing agency or board of licensure or certification a CS-63, within twenty (20) calendar days of the date of administrative hearing decision, if an administrative hearing results in a finding that the case qualifies for:

a. A license or certificate denial;

b. Suspension; or

c. Revocation. ~~and~~

6. The cabinet shall notify the issuing board or agency that the obligor is no longer ~~deemed by the cabinet to be~~ subject to denial, suspension, or revocation, if the obligor, in accordance with KRS 205.712(11):

a. Has eliminated the child support arrearage;

b. Is making payments on the child support arrearage in accordance with a court or administrative order; or

c. Complies with a subpoena or warrant relating to paternity or child support proceedings.

(b) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, the cabinet shall take action against a license to carry a concealed deadly weapon as specified in KRS 237.110(4).

(3) Vehicle booting.

(a) If an obligor owes an arrearage equal to or greater than six (6) months obligation of an assigned support obligation and fails to comply with a subpoena or warrant relating to a child support proceeding, the cabinet may enforce a lien on a vehicle registered to the obligor by immobilization with a vehicle boot as established in KRS 205.745(9).

(b) **The cabinet shall:**

1. Verify with the Department of Vehicle Regulation that the vehicle identification number for the vehicle to be booted is registered in the obligor's name;

2. Verify the vehicle to be booted is solely owned by the obligor, co-owned by the obligor and current spouse, or owned by a business in which the obligor is the sole proprietor;

3. Send a notice of intent to the obligor, unless there is reason to believe that the obligor will leave town or hide the vehicle;

4. File a lien in the county where the vehicle is kept; and

5. Set a target date for booting the vehicle, if the obligor does not contact the cabinet within ten (10) days of notice to negotiate a settlement.

(c) The cabinet shall send a cancellation notice to the obligor and to the appropriate local law enforcement personnel to terminate the booting of the vehicle.

(4) Newspaper publication of a list of delinquent obligors. If an obligor owes an arrearage equal to or greater than six (6) months of an assigned support obligation or fails to comply with a subpoena or warrant relating to paternity or child support proceedings, as established in KRS 405.411, a cabinet designee under 205.712(6) may:

(a) Compile and furnish a list to a newspaper of general circulation in that county for publication; and

(b) Include the name, last known address, and the past due amount owed by the obligor.

(5) Passport denial, revocation, or limitation. If the obligor owes an arrearage of \$2,500 or more, in accordance with 42. U.S.C. 652 and 654(31), the cabinet shall:

(a)1. Provide the Advance Notice to Collect Past due Support, CS-122, to the obligor of the determination to be referred for passport denial, revocation, or limitation; and

2. Include in the notice the consequences of the referral and the right to contest the action by requesting a hearing in accordance with KRS 205.712(8);

(b) Provide the U.S. Secretary of Health and Human Services the names of individuals and supporting documentation for the denial, revocation, or limitation of the obligor's passport; and

(c) Notify the Secretary of the U.S. Department of Health and Human Services that the cabinet requests the release of the passport of an obligor that had been denied if any of the following criteria are met:

1. There was an erroneous submittal of a Social Security number;

2. There is a case of mistaken identity and the cabinet has verified this information;

3. The obligor is required to pay the past due support in full;

4. The obligor provides documentation on company letterhead verifying travel for employment or business purposes and makes alternate payment arrangements acceptable to the cabinet; or

5. There are extenuating circumstances in which the reason for travel is a family emergency and supporting documentation is provided to and accepted by the cabinet.

**(6) Delinquent list. (a) The cabinet shall provide to the Office of the Attorney General a list of names of delinquent obligors for publication on the Internet, as established in KRS 15.055 and 205.712(16).**

**(b) The cabinet shall send the obligor meeting the criteria in 40 KAR 1:080 a CS-175, Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing, notifying him of his right to contest by requesting a hearing.**[(6) Delinquent list.]

(a) The cabinet shall provide to the Office of the Attorney General a list of names of delinquent obligors for publication on the Internet, as established in KRS 15.055 and 205.712(16).

(b) The cabinet shall send the obligor meeting the criteria in 40 KAR 1:080 a CS-175, Notice of intent to Place Noncustodial Parent's Name on Delinquent Listing notifying him of his right to contest by requesting a hearing.]

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-44 Notice of Intent to Request Denial or Suspension", edition 9/10;

(b) "CS-63 Notice to Licensing/Certification Board or Agency", edition 9/10;

(c) "CS-68 Order to Withhold and Deliver", edition 9/10;

(d) "CS-69 Answer to Withhold and Deliver", edition 9/10;

(e) "CS-70 Release of Order to Withhold and Deliver", edition 9/10;

(f) "CS-72 National Medical Support Notice", edition 10/12[9/10];

(g) "CS-73 Unemployment Insurance Letter", edition 9/10;

(h) "CS-76 Unemployment Insurance Notice of Withholding",



VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

edition 9/10;

(i) "CS-78 Payment Agreement", edition 9/10;

(j) "CS-85 Notice of Lien", edition 10/12[9/10];

(k) "CS-89 Income Withholding for Support", edition 10/12[9/10];

(l) "CS-119 Noncustodial Parent's Notice of Lien", edition 9/10;

(m) "CS-120 Release of Lien", edition 9/10;

(n) "CS-121 Noncustodial Parent's Answer to Withhold", edition 9/10; ~~and~~

(o) "CS-122 Advance Notice of Intent to Collect Past-Due Support", edition 10/12; ~~and~~

~~(p) "CS-175 Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing", edition 4/09.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~ 9/10; and

~~(p) "CS-175 Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing", edition 4/09].~~

STEVEN P. VENNO, Deputy Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 13, 2012

FILED WITH LRC: July 13, 2012 at 11 a.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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

OFFICE OF THE ATTORNEY GENERAL  
Office of Consumer Protection  
(Amended After Comments)

40 KAR 2:330. Mold remediation.

RELATES TO: KRS 367.83801, 367.83803, 367.83805, 367.83807

STATUTORY AUTHORITY: KRS 367.83805(1), 367.83805(2), 367.83807

NECESSITY, FUNCTION AND CONFORMITY: KRS 367.83805(1) requires the Department of Law, after consultation with the Public Protection Cabinet and the Department for Public Health, to establish minimum standards for mold remediation companies that operate in the Commonwealth based on the five (5) general principles of mold remediation created by the Institute of Inspection, Cleaning and Restoration Certification (IICRC) in its publication, IICRC S520, Second Edition, Standard and Reference Guide for Professional Mold Remediation, or its successor publication. KRS 367.83805(2) authorizes customer complaints regarding compliance by mold remediation companies with 40 KAR Chapter 2 promulgated pursuant to KRS 367.83805. This administrative regulation establishes the minimum standards for mold remediation companies that operate in the Commonwealth and incorporates by reference the forms to be utilized by mold remediation companies.

Section 1. Definitions. (1) "Customer" is defined by KRS 367.83803(1).

(2) "Indoor environmental professional" means a person qualified through training, education, and experience to assess mold problems, conduct and review sampling plans and results, and evaluate and develop plans to remediate mold in structures.

(3) "Mold" is defined by KRS 367.83803(3).

(4) "Mold remediation" is defined by KRS 367.83803(4).

(5) "Mold remediation company" is defined by KRS 367.83803(5).

(6) **"Normal fungal ecology" means an indoor environment that may have settled spores, fungal fragments, or traces of actual growth whose identity, location, and quantity are reflective of typical settled spores, fungal fragments, or traces of actual growth for a similar indoor environment.**

(7) "Postremediation evaluation" means the activity conducted by a mold remediation company to determine that the mold remediation has been performed and the mold remediation area, structure, and systems are free of mold contamination.

~~(8)~~<sup>(7)</sup> "Postremediation verification" means sampling and analysis conducted to determine that a remediated area has been restored to a normal fungal ecology.

Section 2. Safety and Health. A mold remediation company shall:

(1) Assure that each principal and employee has appropriate training, education, and experience to perform the tasks required pursuant to this administrative regulation for mold remediation in a professional and workmanlike manner;

(2) Use appropriate engineering controls and work practices to prevent exposure of occupants and the mold remediation company's employees and agents to mold;

(3) Determine the type of containment to use during mold remediation;

(4) Inform the customer in writing of the mold remediation company's determinations regarding containment, including, at a minimum, if the mold remediation company plans to:

(a) Use full or limited containment;

(b) Use negative pressure; or

(c) Advise **the customer of other** measures to **be used to protect the** occupants;

(5) If the mold remediation company makes a determination not to use containment, advise the customer in writing of the reasons for that determination;

(6) If mold is or will be disturbed, or if workers enter or will enter a containment area, ensure that workers use appropriate protective equipment, including, at a minimum:

(a) A respirator approved by the National Institute for Occupational Safety and Health (NIOSH) **that is appropriate for the environment to be encountered**;

(b) Goggles, if a full face respirator is not used; and

(c) Gloves; and

(7) Prior to contracting for mold remediation, inform the customer in writing:

(a) Of the potential health risks of mold exposure generally, by providing a copy of the most recent edition of the U.S. Environmental Protection Agency's A Brief Guide to Mold, Moisture, and Your Home, Document Number EPA 402-K-02-003;

(b) Of the areas to be vacated for the duration of the remediation and the estimated duration of the remediation;

(c) Of the need to advise tenants and occupants to avoid entering containment areas and work areas for the duration of the remediation **and of any other measures customers should use to protect tenants and occupants**; and

(d) About mold and indoor environmental professionals generally, by providing a copy of Read This About Mold Before You Sign A Contract, Form MRC-1, and Read This About Indoor Environmental Professionals Before You Sign A Contract, Form MRC-2, to the customer prior to or during the initial visit to the property. If the Form MRC-1 is provided to the customer with other items, the Form MRC-1 shall be on top of or prominent among the other items.

Section 3. Contamination Prevention and Project Documentation. (1) Except as provided by subsection (6) of this section, a mold remediation company shall provide the customer with a written mold assessment and remediation plan prior to entering into a mold remediation contract with the customer.

(a) Portions of the mold assessment and remediation plan may be prepared by an independent indoor environmental professional if the customer has engaged one (1).

(b) The written mold assessment and remediation plan shall include, at a minimum:

1. The scope of work, including, at a minimum, the area or areas to be remediated, the tasks to be performed, and a price estimate;

2. An assessment of the source of moisture and, if applicable, measures to take to remedy or manage the moisture source. If the source of moisture or the measures to remedy or manage the moisture source have not been identified or cannot be determined, the mold assessment and remediation plan shall include a statement to that effect;

3. An assessment of the extent of the mold problem to be addressed;

4. The containment and removal techniques that will be used to control the spread of mold contamination, including the written disclosures required by Section 2(4), (5), and (7) of this administrative regulation; and

5. A statement describing how the postremediation evaluation will be conducted, including:

a. Visual examination for removal of mold, and mold-contaminated or water-damaged materials and debris;

b. Examination to determine that surfaces are free of dust;

c. Examination to determine if mold-associated odors have been eliminated; and

d. Sampling or testing for postremediation verification, if recommended. If postremediation verification is to be conducted, it shall be performed by an independent indoor environmental professional paid directly by the customer and reporting directly to the customer.

(2) If the source of moisture or the measures to remedy or manage the moisture source have not been identified or cannot be determined, or if the customer chooses to proceed with mold remediation without remediating and managing the moisture source,

or both, a mold remediation company shall not perform mold remediation work for the customer until the mold remediation company obtains a completed, signed, and dated Notice of Moisture Problem, Form MRC-3, from the customer and provides a copy of a completed Form MRC-3 to the customer.

(3) A mold remediation company shall not perform mold remediation work without a written contract. A mold remediation company shall ensure that a contract for mold remediation incorporates the mold assessment and remediation plan required by subsection (1) of this section.

(4) The mold remediation company shall obtain a copy of Read This About Mold Before You Sign A Contract, Form MRC-1, and Read This About Indoor Environmental Professionals Before You Sign A Contract, Form MRC-2, with the customer's dated signature on each form and provide a copy of the completed Form MRC-1 and Form MRC-2 to the customer prior to entering into a contract with the customer for mold assessment or mold remediation.

(5) A mold remediation company shall provide the customer with a written change order to be signed and dated by the customer prior to performing additional work for which there is a cost to the customer or prior to a substantive or material departure from the mold assessment and remediation plan.

(6)(a) If, because of the size and scope of the work to be performed, it is not practicable to provide a mold assessment and remediation plan for a commercial or institutional customer and if the customer requests in writing that work begin prior to receiving the mold assessment and remediation plan, the mold remediation company shall, prior to entering into a mold remediation contract with the customer:

1. Obtain a completed, signed, and dated Commercial or Institutional Customer, Form MRC-4, from the customer and provide a copy of a completed Form MRC-4 to the customer; and

2. Provide the customer a price list that includes the amounts charged for labor and equipment.

(b) The mold remediation company shall provide updates to the customer regarding the work performed and the work not yet performed. The updates shall be provided on a periodic basis as agreed to by the customer.

(7) At the conclusion of the mold remediation work, a mold remediation company shall provide the customer with a written postremediation report that includes, at a minimum, a:

(a) Statement indicating if all visible mold, unrestorable mold-contaminated materials, and debris have been removed;

(b) Statement indicating if all mold-associated odors have been eliminated;

(c) Statement indicating if surfaces are free of dust; **[and]**

(d) **List of any unexpected conditions or events that arose during the mold remediation work that have the potential for:**

**1. A significant impact on worker or occupant health or safety; or**

**2. Interfering with achieving or maintaining an appropriate postremediation condition of the remediated area;**

**(e) Statement indicating if all salvable structures, systems, and contents have been dried to an appropriate moisture content; and**

**(f) List of independent indoor environmental professionals, if sampling or testing to verify the mold remediation is required by the contract.**

(8) A mold remediation company shall maintain **a copy[copies]** of all documents required by this administrative regulation for a period of at least three (3) years following completion of the mold remediation work.

Section 4. Contamination Control. A mold remediation company shall:

(1) Control mold contamination as close as practical to its source in order to prevent the spread of mold or mold spores or particles;

(2) Minimize dust generation; and

(3) Ensure that mold contamination does not spread to less-contaminated or non-contaminated areas.

Section 5. Contamination Removal. A mold remediation company shall:

(1) Physically remove mold contamination from the structure, systems, and contents to return the structure, systems, and contents within the remediated area to a normal fungal ecology; and

(2) Return the structure, systems, and contents within the remediated area to a clean condition. The structure, systems, and contents shall be considered clean if:

(a) Mold contamination is removed;

(b) Unrestorable mold-contaminated materials are removed;

(c) Debris is removed;

(d) Surfaces are free of dust; and

(e) Remediated areas are free of odors associated with mold.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Read This About Mold Before You Sign A Contract", Form MRC-1, July 2012;

(b) "Read This About Indoor Environmental Professionals Before You Sign A Contract", Form MRC-2, July 2012;

(c) "Notice of Moisture Problem", Form MRC-3, July 2012;

(d) "Commercial or Institutional Customer", Form MRC-4, July 2012; and

(e) "A Brief Guide to Mold, Moisture, and Your Home", Document Number EPA 402-K-02-003, Reprinted September 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8:30 a.m. to 4:30 p.m.

JACK CONWAY, Attorney General

TODD LEATHERMAN, Executive Director

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 14, 2012 at 11 a.m.

CONTACT PERSON: Kevin R. Winstead, Assistant Attorney General, Kentucky Attorney General's Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 696-5389, fax (502) 573-8317.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead, Assistant Attorney General

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum standards applicable to mold remediation companies that operate in the Commonwealth of Kentucky pursuant to KRS 367.83801 to.83807 as enacted by House Bill 44 (2010 Ky. Acts ch. 89), and incorporates information forms for customers about mold and indoor environmental professionals, a notice of moisture problem form for customers, an information form for commercial or institutional customers, and an EPA guide to inform customers about the health risks of mold exposure generally, to be utilized by persons subject to this administrative regulation.

(b) The necessity of this administrative regulation: This regulation is necessary for the efficient and uniform application of the requirements of KRS 367.83801 to.83807. KRS 367.83805(1) requires the Attorney General, after consultation with the Public Protection Cabinet (now the Energy and Environmental Cabinet) and the Department for Public Health, to establish the minimum standards applicable to mold remediation companies that operate in the Commonwealth of Kentucky, based on the five general principles of mold remediation created by the Institute of Inspection, Cleaning and Restoration Certification (IICRC) in its publication, IICRC S520, Second Edition, Standard and Reference Guide for Professional Mold Remediation, or its successor publication. KRS 367.83805(1) also requires all mold remediation companies operating in the Commonwealth of Kentucky to adhere to the minimum standards established by the Attorney General, and KRS 367.83805(2) provides that consumer complaints regarding adherence by mold remediation companies to the administrative regulations be directed to the Attorney General. KRS 367.83807 provides the Attorney General with jurisdiction to enforce KRS 367.83801 to.83807.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation establishes minimum standards applicable to mold remediation companies that operate in the Commonwealth of Kentucky, based on the five general principles of mold remediation created by the IICRC in its publication, IICRC S520, Second Edition, Standard and Reference Guide for Professional Mold Remediation. These minimum standards were established after consultation with representatives of the Public Protection Cabinet (now the Energy and Environmental Cabinet) and the Department for Public Health.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 367.83801 to 83807, by establishing minimum standards applicable to mold remediation companies that operate in the Commonwealth of Kentucky, and incorporating an information form for customers about mold, an information form for customers about indoor environmental professionals, a notice of moisture problem form for customers, an information form for commercial or institutional customers, and an EPA guide to inform customers about the health risks of mold exposure generally, to be utilized by persons subject to this administrative regulation.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable because this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable because this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals or entities that perform mold remediation for compensation in the Commonwealth of Kentucky and their customers. It is estimated that approximately 35 to 50 mold remediation companies will be affected by this administrative regulation, but the actual number is unknown. The customers of mold remediation companies operating in the Commonwealth of Kentucky will also be affected, but the number is unknown.

(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 enactment of House Bill 44 (2010 Ky. Acts ch. 89), codified at KRS 367.83801 to 83807, subjects mold remediation companies that operate in the Commonwealth of Kentucky to certain minimum standards, and requires the Attorney General, after consultation with the Public Protection Cabinet and the Department for Public Health, to establish the minimum standards applicable to mold remediation companies that operate in the Commonwealth of Kentucky, based on the five general principles of mold remediation created by the IICRC in its publication, IICRC S520, Second Edition, Standard and Reference Guide for Professional Mold Remediation, or its successor publication. This administrative regulation will impact mold remediation companies that operate in the Commonwealth of Kentucky and their customers by establishing certain minimum standards, such as:

1. A mold remediation company shall assure the appropriate training, education, and experience of its principals and employees (Section 2(1));

2. A mold remediation company shall use appropriate engineering controls and work practices to prevent exposure to mold (Section 2(2));

3. A mold remediation company shall determine the type of containment to use during mold remediation and inform the customer (Section 2(3), (4), (5));

4. A mold remediation company shall ensure that workers use appropriate protective equipment if mold will be disturbed (Section 2(6));

5. A mold remediation company shall provide written information to the customer about: the potential health risks of mold by using the prescribed EPA guide; the areas to be vacated; the need to tell occupants to avoid containment and work areas; any other measures customers should use to protect tenants and occupants; and mold and indoor environmental professionals generally by using the prescribed forms. A mold remediation company shall also obtain copies of the information forms about mold and indoor environmental professionals signed by the customer prior to entering into a contract with a customer for mold assessment or mold remediation (Section 2(7), Section 3(4));

6. A mold remediation company shall provide the customer with a written mold assessment and remediation plan containing at least the information required by this administrative regulation, before entering into a mold remediation contract, subject to the limited exception explained below for commercial or institutional customers (Section 3(1), (6));

7. If the size and scope of the work make it not practicable to provide a mold assessment and remediation plan and the commercial or institutional customer requests in writing that work begin prior to receiving the plan, a mold remediation company shall provide a price list that includes the amounts charged for labor and equipment and the form for commercial or institutional customers, and shall provide updates to the customer regarding the work performed and the work not yet performed (Section 3(6));

8. A mold remediation company shall provide the notice of moisture problem form to the customer if the source of moisture or the measures to remedy and manage the moisture source has not been identified or cannot be determined, or if the customer chooses to proceed with mold remediation without remedying and managing the moisture source, or both (Section 3(2));

9. A mold remediation company shall not perform any mold remediation work without a written contract that incorporates the mold assessment and remediation plan (Section 3(3));

10. A mold remediation company shall get a signed change order from the customer before doing additional work if there is a cost to the customer or it is a substantive or material departure from the mold assessment and remediation plan (Section 3(5));

11. At the conclusion of the mold remediation work, a mold remediation company shall provide the customer with a written postremediation report containing at least the information required by this administrative regulation (Section 3(7));

12. A mold remediation company shall maintain a copy of documents required by this administrative regulation for three years after completing the work (Section 3(8));

13. A mold remediation company shall control mold contamination as close as practical to its source in order to prevent the spread of mold or mold spores or particles, and minimize dust generation (Section 4);

14. A mold remediation company shall physically remove mold contamination to return the remediated area to a normal fungal ecology, and return remediated area to a clean condition (Section 5); and

15. Any postremediation verification shall be performed by an indoor environmental professional paid directly by and reporting directly to the customer (Section 3(1)5.d.);

(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 print the five forms required by this administrative regulation is estimated to be \$2.00 to \$2.50 per customer. The estimated total printing cost to a mold remediation company is unknown because it depends on the number of customers or the number of copies printed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pursuant to KRS 367.83805(2), customer complaints regarding adherence by mold remediation companies to this administrative regulation shall be directed to the Attorney General. The Attorney General will review such customer complaints to determine compliance with this administrative regulation.

(5) Provide an estimate of how much it will cost to implement

this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund appropriations and agency receipts.

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

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

(9) TIERING: Tiering is not applied in this administrative regulation because the administrative regulation does not disproportionately impact certain classes of regulated entities and the requirements of the statutes apply uniformly to any mold remediation company operating in the Commonwealth of Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of the Attorney General will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 367.83801, KRS 367.83803, KRS 367.83805, KRS 367.83807.

3. 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? 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:

#### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amended After Comments)

#### 401 KAR 51:001. Definitions for 401 KAR Chapter 51.

RELATES TO: KRS 48.010(15)(a), 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, 50 Appendices A-R, 51.100, 51.121, 51.165, 51.166, 51 Appendix S, 52.920, 53, 60, 60 Appendices A, B, 61, 61 Appendix B, 63 Appendices A-D, 70.2, 75, 82, 96, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used in 401 KAR Chapter 51. The definitions contained in this administrative regulation are not ~~neither~~ more stringent ~~nor otherwise different~~ than the corresponding federal definitions.

Section 1. Definitions. The definitions with citations to the Code of Federal Regulations shall be governed by 40 C.F.R. Parts 50 through 96, **as published on July 1, 2012**, effective July 1, 2010.

(1) "Acid rain emissions limitation" means a limitation on emissions of SO<sub>2</sub> or NO<sub>x</sub> imposed by the Acid Rain Program under 42 U.S.C. 7651 to 7651o.

(2) "Actual emissions":

(a) Means the actual rate of emissions of a regulated NSR pollutant from an emissions unit as determined according to the following:

1. Actual emissions as of a particular date equals the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four (24) month period, that precedes that date and is representative of normal source operation, unless a different time period is more representative of normal source operation; and

2. The unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time periods are used to calculate actual emissions;

(b) Means source-specific allowable emissions for the unit are equivalent to actual emissions of the unit if the cabinet has made an equivalency determination pursuant to 40 C.F.R. 51.166;

(c) Means, for an emissions unit that has not begun normal operations on a particular date, the potential to emit of the unit on that date; and

(d) Does not mean:

1. Calculating if a significant emissions increase has occurred; or

2. Establishing a PAL under 401 KAR 51:017, Section 20.

(3) "Actuals PAL" or "PAL" means a plant-wide applicability limit established for a major stationary source based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(4) "Adverse impact on visibility" is defined by 40 C.F.R. 51.301.

(5) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(6) "Air contaminant" is defined by KRS 224.01-010(1).

(7) "Air pollutant" means air contaminant.

(8) "Air pollution" is defined by KRS 224.01-010(3).

(9) "Air pollution control equipment" means a mechanism, device, or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(10) "Allocate" or "allocation" means the number of NO<sub>x</sub> allowances to be credited to a NO<sub>x</sub> budget unit.

(11) "Allocation period" means each three (3) year period beginning May 1, 2004.

(12) "Allowable emissions" means:

(a) The emissions rate of a stationary source calculated using the maximum rated capacity of the source, unless the source is subject to federally enforceable limits that restrict the operating rate, hours of operation, or both, and the most stringent of the following:

1. The applicable standards codified in 40 C.F.R. Parts 60 and 61;

2. The applicable SIP emissions limitations, including those with a future compliance date; or

3. The emissions rates specified as a federally enforceable permit condition, including those with a future compliance date; or

(b) For an actuals PAL, the emissions rate of a stationary source calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit, and the most stringent provision of paragraph (a) 1. through 3. of this subsection.

(13) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source; or

(b) A physical change in or change in the method of operation of an affected facility that increases the potential to emit a pollutant, to which a standard applies, emitted by the facility or that

results in the emission of an air pollutant, to which a standard applies, not previously emitted.

(14) "Alternative method" is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both the U.S. EPA and the cabinet.

(15) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(16) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(17) "ANSI" means American National Standards Institute.

(18) "AOAC" means Association of Official Analytical Chemists.

(19) "ASTM" means American Society for Testing and Materials.

(20) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, that:

(a) For an existing electric utility steam generating unit (EUSGU), the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding the date the owner or operator begins actual construction of the project, unless a different twenty-four (24) month time period is more representative of normal source operation.

1. The rate is an average that:

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period; and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b. of this subparagraph; and

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed with a different consecutive twenty-four (24) month period allowed for each regulated NSR pollutant;

(b) For an existing emissions unit that is not an EUSGU, the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period beginning on or after November 15, 1990, and immediately preceding the earlier of the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the cabinet for a permit required under 401 KAR 51:017 or 51:052.

1. The rate is an average that:

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward:

(i) To exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period;

(ii) To exclude any emissions that would have exceeded an emission limitation with which the major stationary source is required currently to comply, if the source had been required to comply with the limitations during the consecutive twenty-four (24) month period; and

(iii) For an emission limitation that is part of a maximum achievable control technology standard proposed or promulgated under 40 C.F.R. Part 63, only if the Commonwealth of Kentucky has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with 40 C.F.R. 51.165(a)(3)(ii)(G); and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b. of this subparagraph.

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used for each regulated NSR pollutant to determine the baseline actual emissions for the emissions units being changed with a different consecutive twenty-four (24) month period;

(c) For a new emissions unit, equals zero for determining the emissions increase that will result from the initial construction and operation of the new unit and thereafter, for all other purposes, equals the unit's potential to emit; or

(d) For a PAL for a stationary source, is determined as follows:

1. For an existing EUSGU, in accordance with the procedures contained in paragraph (a) of this subsection;

2. For other existing emissions units, in accordance with the procedures contained in paragraph (b) of this subsection; and

3. For a new emissions unit, in accordance with the procedures contained in paragraph (c) of this subsection.

(21) "Baseline area" means an intrastate area and every part of that area designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1)  $\mu\text{g}/\text{m}^3$  annual average of the pollutant for which the minor source baseline date is established for  $\text{SO}_2$ ,  $\text{NO}_2$ , or  $\text{PM}_{10}$  or equal to or greater than 0.3  $\mu\text{g}/\text{m}^3$  annual average for  $\text{PM}_{2.5}$ .

(a) Area redesignations under 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) do not intersect and are not smaller than the area of impact of a major stationary source or major modification that:

1. Establishes a minor source baseline date; or

2. Is subject to 401 KAR 51:017 and would be constructed in the Commonwealth of Kentucky.

(b) A baseline area established originally for total suspended particulate (TSP) increments remains in effect to determine the amount of available  $\text{PM}_{10}$  increments, unless the cabinet rescinds the corresponding minor source baseline date.

(22) "Baseline concentration" means the ambient concentration level that exists in the baseline area on the date the applicable minor source baseline date is established.

(23) "Baseline date" means major source baseline date or minor source baseline date and is established for each pollutant for which increments or other equivalent measures have been established if the area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) for the pollutant on the date of the source's complete application; and

(a) For a major stationary source, the pollutant would be emitted in significant amounts; or

(b) For a major modification, there would be a significant net emissions increase of the pollutant.

(24) "Begin actual construction" means:

(a) Initiation of physical on-site construction activities on an emissions unit that are of a permanent nature and include installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures; and

(b) For a change in method of operations, those on-site activities, other than the preparatory activities, that mark the initiation of the change.

(25) "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each regulated NSR pollutant that will be emitted from a proposed major stationary source or major modification and:

(a) Is determined by the cabinet pursuant to 401 KAR 51:017, Section 8, after taking into account energy, environmental, and economic impacts and other costs, to be achievable by the source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant;

(b) Does not result in emissions of a pollutant that would exceed the emissions allowed by an applicable standard codified in 40 C.F.R. Parts 60 and 61; and

(c) Is satisfied by a design, equipment, work practice, or operational standard or combination of standards approved by the cabinet, if:

1. The cabinet determines pursuant to 40 C.F.R. 51.166(b)(12) that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible;

2. The standard establishes the emissions reduction achievable by implementation of the design, equipment, work practice, or operation; and

3. The standard provides for compliance by means that achieve equivalent results.

(26) "BOD" means biochemical oxidant demand.

(27) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(28) "BTU" means British thermal unit.

(29) "Building, structure, facility, or installation" means all of the pollutant emitting activities that:

(a) Belong to the same industrial grouping or have the same two (2) digit major group code as described in the Standard Industrial Classification Manual;

(b) Are located on one (1) or more contiguous or adjacent properties;

(c) Are under the control of the same person or persons under common control; and

(d) Do not include the activities of a vessel.

(30) "°C" means degree Celsius (centigrade).

(31) "Cabinet" is defined by KRS 224.01-010(9).

(32) "Cal" means calorie.

(33) "Capital expenditure" is defined by 40 C.F.R. 60.2.

(34) "cfm" means cubic feet per minute.

(35) "CH<sub>4</sub>" means methane.

(36) "Clean coal technology" is defined by 40 C.F.R. 51.166(b)(33).

(37) "Clean coal technology demonstration project" is defined by 40 C.F.R. 51.166(b)(34).

(38) "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(39) "CO" means carbon monoxide.

(40) "CO<sub>2</sub>" means carbon dioxide.

(41) "COD" means chemical oxidant demand.

(42) "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to improve overall efficiency of electricity generation or steam production.

(43) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(44) "Commence" means that an owner or operator:

(a) Has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility; or

(b) For construction of a major stationary source or major modification in the PSD or NSR program, has all necessary preconstruction approvals or permits, and:

1. Has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Has entered into binding agreements or contractual obligations, that cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(45) "Commence commercial operation" means to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date remains the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered; or

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of commercial operation.

(46) "Commence operation" means, for a NOx budget unit, to have begun a mechanical, chemical, or electronic process, including start-up of a unit's combustion chamber. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date remains the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered; or

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of operation.

(47) "Complete" is defined by 40 C.F.R. 51.166(b)(22).

(48) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(49) "Compliance supplement pool" means the quantity of NOx allowances provided to Kentucky by the U.S. EPA to be:

(a) Allocated to NOx budget units that achieve early reduction; or

(b) Used to assist NOx budget sources that are unable to meet the compliance deadline as provided in 401 KAR 51:180, Section 5.

(50) "Construction" means:

(a) Fabrication, erection, installation, or modification of an air contaminant source; or

(b) For the NSR program, any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit that would result in a change in the emissions at an air contaminant source.

(51) "Continuous emissions monitoring system" or "CEMS" means all of the equipment necessary to meet the data acquisition and availability requirements of 401 KAR 51:017 or 51:052 to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(52) "Continuous emission monitoring system for NOx" or "CEMS for NOx" means the equipment required to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NOx emissions, expressed in tons per hour for NOx. The following systems are necessary component parts, as required by 40 C.F.R. Part 75, included in a continuous emissions monitoring system:

(a) Flow monitor;

(b) NOx pollutant concentration monitor;

(c) Diluent gas monitor (O<sub>2</sub> or CO<sub>2</sub>);

(d) Continuous moisture monitor; and

(e) Automated data acquisition and handling system.

(53) "Continuous emissions rate monitoring system" or "CERMS" is defined by 40 C.F.R. 51.166(b)(46).

(54) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations in 401 KAR Chapters 50 to 65, used to sample, to condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

(55) "Continuous parameter monitoring system" or "CPMS" is defined by:

(a) 40 C.F.R. 51.166(b)(45) for 401 KAR 51:017; or

(b) 40 C.F.R. 51.165(a)(1)(xxxiii) for 401 KAR 51:052.

(56) "Control period" means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(57) "Director" means Director of the Division for Air Quality of the Energy and Environment Cabinet.

(58) "District" is defined by KRS 224.01-010(11).

(59) "dscf" means dry cubic feet at standard conditions.

(60) "dscm" means dry cubic meter at standard conditions.

(61) "Electric generating unit" means, for 401 KAR 51:160 to 51:195, a fossil fuel-fired boiler, combustion turbine, or a combined cycle system used to generate twenty-five (25) megawatts or more of electricity, some of which is offered for sale.

(62) "Electric utility steam generating unit" or "EUSGU" is defined by 40 C.F.R. 51.166(b)(30).

(63) "Emission standard" means that numerical limit that fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.

(64) "Emissions unit" means any part of a stationary source, including an EUSGU, that emits or has the potential to emit a regulated NSR pollutant. For 401 KAR 51:017 and 51:052, there are two (2) types of emissions units:

(a) A new emissions unit, which is any emissions unit that is or will be newly constructed and that has existed for less than two (2) years from the date the unit first operated; and

(b) An existing emissions unit, which is any emissions unit that does not meet the requirements in paragraph (a) of this subsection or is a replacement unit.

(65) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source shall use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.

(66) "Equivalent method" means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet and the U.S. EPA pursuant to 40 C.F.R. 53.3 to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(67) "Excess NO<sub>x</sub> emissions" means any tonnage of nitrogen oxides emitted by a NO<sub>x</sub> budget unit during a control period that exceeds the NO<sub>x</sub> budget emissions limitation for the unit.

(68) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(69) "Existing source" means a source that is not a new source.

(70) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the national ambient air quality standard for ozone.

(71) "°F" means degree Fahrenheit.

(72) "Federal land manager" is defined by 40 C.F.R. 51.166(b)(24).

(73) "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:

(a) Requirements developed under 40 C.F.R. Parts 60 and 61;

(b) Requirements in the Kentucky State Implementation Plan (SIP) approved by the U.S. EPA; and

(c) Any permit requirements established under 40 C.F.R. 52.21 or under the Kentucky SIP approved pursuant to 40 C.F.R. Part 51, Subpart I, including operating permits issued under a U.S. EPA-approved program incorporated into the SIP, that expressly requires adherence to a permit issued under the program.

(74) "Federally enforceable permit" means a permit issued under 401 KAR 52:020 or 52:030, as appropriate.

(75) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(76) "Fossil fuel" means natural gas; petroleum; coal; or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

(77) "Fossil fuel fired" means, for a unit:

(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combusted comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year

starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be fossil fuel fired as of the date during the year the unit begins combusting fossil fuel.

(78) "ft" means feet or foot.

(79) "Fuel" means natural gas; petroleum; coal; wood; or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(80) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(81) "g" means gram.

(82) "gal" means gallon.

(83) "General fund" is defined by KRS 48.010(15)(a).

(84) "Generator" means a device that produces electricity.

(85) "gr" means grain.

(86) "HCl" means hydrochloric acid.

(87) "Heat input" means the product, in MMBTU per unit of time, of the gross calorific value of the fuel, in BTU per lb, and the fuel feed rate into a combustion device, in mass of fuel per unit of time, that:

(a) Does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources; and

(b) Is measured, recorded, and reported to the cabinet.

(88) "HF" means hydrogen fluoride.

(89) "Hg" means mercury.

(90) "High terrain" is defined by 40 C.F.R. 51.166(b)(25).

(91) "hr" means hour.

(92) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(93) "Hydrocarbon combustion flare" means:

(a) A flare used to comply with an applicable New Source Performance Standard (NSPS) or Maximum Achievable Control Technology (MACT) standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(b) A flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 µg/dscm hydrogen sulfide.

(94) "H<sub>2</sub>O" means water.

(95) "H<sub>2</sub>S" means hydrogen sulfide.

(96) "H<sub>2</sub>SO<sub>4</sub>" means sulfuric acid.

(97) "in" means inch.

(98) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(99) "Industrial boiler or turbine" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.

(100) "Innovative control technology" is defined by 40 C.F.R. 51.166(b)(19).

(101) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.

(102) "J" means joule.

(103) "Kg" means kilogram.

(104) "l" means liter.

(105) "lb" means pound.

(106) "Legally enforceable" means the cabinet or the U.S. EPA has the authority to enforce a certain restriction.

(107) "Long dry kiln" means a kiln that employs no preheating of the feed and has a dry inlet feed.

(108) "Long wet kiln" means a kiln that employs no preheating of the feed and the inlet feed to the kiln is a slurry.

(109) "Low terrain" means an area other than high terrain.

(110) "Lowest achievable emissions rate" or "LAER" means, for any source:

(a)1. The most stringent emissions limitation that is contained in the Kentucky SIP for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitation is not achievable; or



2. The most stringent emissions limitation achieved in practice by the class or category of stationary source;

(b) For a major modification, the lowest achievable emissions rate for the new or modified emissions units at the stationary source; and

(c) An emissions limitation that does not exceed the allowable emissions of an applicable standard established pursuant to 40 C.F.R. Parts 60, 61, or 63.

(111) "m" means meter.

(112) "m<sup>3</sup>" means cubic meter.

(113) "Major emissions unit" means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of a PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act, 42 U.S.C. 7401 - 7671q for nonattainment areas.

(114) "Major modification" means a physical change in or a change in the method of operation of a major stationary source that results in a significant emissions increase and a significant net emissions increase of a regulated NSR pollutant.

(a) A significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or nitrogen oxides is considered significant for ozone.

(b) A physical change or change in the method of operation does not include:

1. Routine maintenance, repair, and replacement;
2. Use of alternative fuel or raw material by reason of an order or a natural gas curtailment plan in effect under a federal act;
3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
4. Use of an alternative fuel or raw material by a stationary source that:

a. The source was capable of accommodating before January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052; unless the change would be prohibited by a federally enforceable permit condition that was established after January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052, pursuant to 40 C.F.R. 51.165 or 51.166; or

b. The source is approved to use by a permit issued pursuant to 401 KAR 51:017 or 51:052;

5. An increase in the hours of operation or in the production rate, unless the change is prohibited by any federally enforceable permit condition established after January 6, 1975, for 401 KAR 51:017 or December 21, 1976, for 401 KAR 51:052 pursuant to 40 C.F.R. 52.21; after June 6, 1979, pursuant to 401 KAR 51:015; after September 22, 1982, pursuant to 401 KAR 51:017; or pursuant to 401 KAR 52:020 and 51:016E;

6. A change in ownership at a stationary source;

7. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

8. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit, on a pollutant-by-pollutant basis; or

9. The reactivation of a very clean coal-fired electric utility steam generating unit.

(c) Instead of this definition, the definition for "PAL major modification", in subsection (175) of this section, is used for a particular regulated NSR pollutant, if the major stationary source is complying with the requirements of 401 KAR 51:017, Section 20, and 401 KAR 51:052, Section 11, for a PAL for that pollutant.

(115) "Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.

(116) "Major source" means a source with a potential emission rate equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, carbon monoxide, or ODS.

(117) "Major source baseline date" means:

(a) For PM<sub>10</sub>[particulate matter] and sulfur dioxide, January 6, 1975; [and]

(b) For nitrogen dioxide, February 8, 1988; and

(c) For PM<sub>2.5</sub>, October 20, 2010.

(118) "Major stationary source" means:

(a)1. A stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant, except that:

a. For ozone nonattainment areas: 100 tons per year of more of volatile organic compounds or nitrogen oxides in a marginal or moderate ozone nonattainment area; fifty (50) tons per year or more of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area; twenty-five (25) tons per year or more of volatile organic compounds or nitrogen oxides in a severe ozone nonattainment area; or ten (10) tons per year or more of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area;

b. Fifty (50) tons per year or more of carbon monoxide in a serious carbon monoxide nonattainment area where stationary sources contribute significantly to carbon monoxide levels; and

c. Seventy (70) tons per year or more of particulate matter (PM<sub>10</sub>) in a serious PM<sub>10</sub> nonattainment area; or

2.a. For the PSD program, any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants with thermal dryers, kraft pulp mills, Portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140, fossil fuel boilers, or combination of fossil fuel boilers, totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants; and

b. Regardless of the stationary source size specified in clause a[subclause (i)] of this subparagraph[clause], a stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

3. Any physical change that will occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change will constitute a major stationary source by itself;

(b) A source that is major for volatile organic compounds or nitrogen oxides is considered major for ozone; and

(c) Fugitive emissions are included only if the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;

18. Sintering plants;  
19. Secondary metal production plants;  
20. Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140;

21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;

22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

23. Taconite ore processing plants;

24. Glass fiber processing plants;

25. Charcoal production plants;

26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or

27. Another stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

(119) "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that is reasonably preventable.

(120) "Mandatory Class I area" means an area identified in 40 C.F.R. Part 81, Subpart D, if the administrator of the U.S. EPA, in consultation with the Secretary of the U.S. Department of Interior, has determined visibility to be an important value.

(121) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the national ambient air quality standard for ozone.

(122) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(123) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes if a unit lacks certified monitors to report heat input and is:

(a) A value calculated according to 40 C.F.R. Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 C.F.R. Part 75, Appendix D, to report heat input; or

(b) A value reported according to 40 C.F.R. Part 75 using the maximum potential flow rate and either the maximum percent CO<sub>2</sub> concentration (in percent CO<sub>2</sub>) or the minimum percent O<sub>2</sub>, if the unit intends to use a flow monitor and a diluents gas monitor.

(124) "Maximum potential NO<sub>x</sub> emission rate" means the emission rate of NO<sub>x</sub> (in lb per MMBTU) calculated according to 40 C.F.R. Part 75, Appendix F, Section 3, using the maximum potential NO<sub>x</sub> concentration as defined in 40 C.F.R. Part 75, Appendix A, Section 2, and the maximum percent O<sub>2</sub> or the minimum percent CO<sub>2</sub> under all operating conditions of the unit except for unit startup, shutdown, and malfunction.

(125) "Maximum rated hourly heat input" means a unit specific maximum hourly heat input (MMBTU) that is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(126) "µg" means microgram.

(127) "mg" means milligram.

(128) "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NO<sub>x</sub> emissions through:

(a) Burning part of the fuel at a lower temperature; and

(b) Reducing-conditions at the solid waste injection point that may destroy some of the NO<sub>x</sub> formed upstream in the kiln burning zone.

(129) "min" means minute.

(130) "Minor source baseline date" means:

(a) The earliest date after the trigger date on which a major stationary source or a major modification subject to permit requirements established pursuant to 40 C.F.R. 52.21 or the Kentucky SIP submits a complete application. The trigger date is:

1. [For particulate matter and sulfur dioxide, the trigger date is] August 7, 1977, for PM<sub>10</sub> and SO<sub>2</sub>;

2. [; and 2. For nitrogen dioxide, the trigger date is] February 8, 1988, for NO<sub>2</sub>; and

3. October 20, 2011, for PM<sub>2.5</sub>;

(b) For TSP increments, that the originally established date remains in effect to determine the amount of available PM<sub>10</sub> increments, unless the cabinet rescinds the minor source baseline date pursuant to 40 C.F.R. 51.166(b)(14)(iv); and

(c) A date established for each pollutant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification will construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) for the pollutant on the date of its complete application pursuant to 401 KAR Chapter 52; and

2. For a major stationary source, the pollutant will be emitted in significant amounts or a significant net emissions increase of the pollutant will occur for a major modification.

(131) "MJ" means megajoules.

(132) "mm" means millimeter.

(133) "MM" means million.

(134) "mo" means month.

(135) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the national ambient air quality standard for ozone.

(136) "Modification" means any physical change in, or a change in the method of operation of, an affected facility that:

(a) Increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category considering available information;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility is considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specification as amended prior to the change;

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, unless an emission control system is removed or replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source.

(137) "Monitoring device" means the total equipment, required by an applicable administrative regulation in 401 KAR Chapters 50 to 65, used to measure and record, if applicable, process parameters.

(138) "Monitoring system" means a monitoring system that meets the requirements of any applicable administrative regulation in 401 KAR Chapters 50 to 65.

(139) "MWe" means megawatt electrical.

(140) "N<sub>2</sub>" means nitrogen.

(141) "Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time if not restricted by seasonal or other deratings as measured with United States Department of Energy standards.

(142) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(143) "Necessary preconstruction approvals or permits" means those permits or approvals required under the administrative regulations approved to the Kentucky SIP pursuant to 40 C.F.R. 52.920, and federal air quality control laws and regulations established pursuant to 42 U.S.C. 7401 - 7671q.

(144) "Net emissions increase" means:

(a) For any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:

1. An increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to 401 KAR 51:017, Section 1(4), or 401 KAR 51:052, Section 1(2); and

2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph are determined as defined in this section.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if:

1. For construction that commences prior to January 6, 2002, the change occurs between the date ten (10) years before construction on the change commences and the date that the increase from the change occurs; and

2. For construction that commences on and after January 6, 2002, the change occurs between the date five (5) years before construction on the change commences and the date that the increase from the change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

1. The cabinet or the U.S. EPA has not relied on the change in issuing a permit for the source pursuant to 401 KAR 51:017, 51:052, or 40 C.F.R. 52.21; and

2. The permit is in effect at the time the increase or decrease in actual emissions from the particular change occurs.

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. For particulate matter, only PM<sub>10</sub> emissions are used to evaluate the net emissions increase for PM<sub>10</sub>.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. The decrease is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

3. The decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs if the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(h) The term, actual emissions, as defined in subsection (2) of this section does not apply in determining creditable increases and decreases.

(145) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation, irrespective of a change in emission rate.

(146) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified in the Kentucky SIP.

(147) "ng" means nanograms.

(148) "NO" means nitric oxide.

(149) "NO<sub>2</sub>" means nitrogen dioxide.

(150) "Nonattainment major new source review program" or "NSR program" is defined by 40 C.F.R. 51.165(a)(1)(xxx). For purposes of this definition, "administrator" means the U.S. EPA.

(151) "NOx" means nitrogen oxides.

(152) "NOx allowance" is defined by 40 C.F.R. 96.2.

(153) "NOx Allowance Tracking System" or "NATS" is defined by 40 C.F.R. 96.2 For purposes of this definition, "administrator" means the U.S. EPA.

(154) "NOx authorized account representative" is defined by 40 C.F.R. 96.2.

(155) "NOx budget emissions limitation" means, for a NOx budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under 401 KAR 51:160 adjusted by deductions of sufficient NOx allowances to account for:

(a) Actual utilization under 40 C.F.R. 96.42(e) for the control period;

(b) Excess NOx emissions for a prior control period under 40 C.F.R. 96.54(d);

(c) Withdrawal from the NOx budget program under 40 C.F.R. 96.86; or

(d) A change in regulatory status for a NOx budget opt-in source under 40 C.F.R. 96.87.

(156) "NOx budget opt-in source" means an affected facility that has elected to become a NOx budget unit under the NOx Budget Trading Program and whose NOx budget opt-in permit has been issued and is in effect.

(157) "NOx budget source" is defined by 40 C.F.R. 96.2.

(158) "NOx Budget Trading Program" is defined by 40 C.F.R. 96.2.

(159) "NOx budget unit" means a unit that is subject to the NOx Budget Trading Program emissions limitation under 401 KAR 51:160 or 40 C.F.R. 96.80.

(160) "NOx budget unit operator" means a person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn and includes a holding company, utility system, or plant manager of a NOx budget unit or source.

(161) "NOx budget unit owner" means:

(a) A holder of a portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement and unless expressly provided for in a leasehold agreement, does not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn; or

(d) For any general account, a person who has an ownership interest with respect to the NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership.

(162) "O<sub>2</sub>" means oxygen.

(163) "O<sub>3</sub>" means ozone.

(164) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(165) "Operating" means, for a NOx budget unit, having documented heat input for more than 876 hours in the six (6) months immediately preceding the submission of an application for an initial NOx budget permit.

(166) "Operator" means, for a NOx budget unit, any person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or unit for which an application for a NOx budget opt-in permit is submitted and not denied or withdrawn, and includes any holding company, utility system, or plant manager of the unit or source.

(167) "Opt-in" means to be elected to become a NOx budget unit under the NOx Budget Trading Program through a final NOx budget opt-in permit.

(168) "Owner", for a NOx budget unit, is defined by 40 C.F.R. 96.2.

(169) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source of which an affected facility is a part.

(170) "oz" means ounce.

(171) "Ozone depleting potential" or "ODP", means pursuant to 40 C.F.R. Part 82, Subpart A, Appendices A and B, the ratio of the total amount of ozone destroyed by a fixed amount of an ozone depleting substance to the amount of ozone destroyed by the same mass of trichlorofluoromethane (CFC-11) in which the ozone depleting potential of CFC-11 is equal to one and zero-tenths (1.0).

(172) "Ozone depleting substance" or "ODS" means any chemical compound regulated under 40 C.F.R. Part 82 with decay products, after the photolysis of the ODS by short-wave ultraviolet light, that are able to catalyze the destruction of stratospheric ozone.

(173) "PAL effective date" means:

(a) The date of issuance of the PAL permit; or

(b) For an increased PAL, the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(174) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(175) "PAL major modification" means any physical change in or a change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(176) "PAL permit" means the permit issued by the cabinet that establishes a PAL for a major stationary source.

(177) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(178) "Particulate matter" means a material, except uncombined water that exists in a finely divided form as a liquid or solid measured by a U.S. EPA-approved test method or a test method approved in the Kentucky SIP.

(179) "Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP.

(180) "Peak load" means the maximum instantaneous operating load.

(181) "Permitted capacity factor" means the annual permitted fuel use divided by the manufacturer's specified maximum fuel consumption multiplied by 8,760 hours per year.

(182) "Person" is defined by KRS 224.01-010(17).

(183) "Plant-wide applicability limitation" or "PAL" means an emission limitation, expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and is established source-wide in accordance with 401 KAR 51:017 or 51:052.

(184) "PM<sub>2.5</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix L, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(185) "PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix J, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(186) "PM<sub>10</sub> emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP.

(187) "Pollution prevention" is defined by 40 C.F.R. 51.166(b)(38).

(188) "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.

(189) "Portland cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(190) "Potential to emit" or "PTE" means:

(a) The maximum capacity of a stationary source to emit a pollutant under its physical and operational design, in which:

1. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation is enforceable as a practical matter; and

2. This definition does not alter or affect the use of this term for other purposes of the Clean Air Act, 42 U.S.C. 7401 - 7671q, or the term "capacity factor" as used in the Acid Rain Program.

(b) For the PSD and NSR programs, the maximum capacity of a stationary source to emit a pollutant under its physical or operational design, in which:

1. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation or the effect it would have on emissions:

a. Is federally enforceable; or

b. For an actual PAL, is federally enforceable or enforceable as a practical matter; and

2. Secondary emissions are not counted.

(191) "ppb" means parts per billion.

(192) "ppm" means parts per million.

(193) "ppm(w/w)" means parts per million (weight by weight).

(194) "Precalciner kiln" means a kiln in which the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.

(195) "Predictive emissions monitoring system" or "PEMS" is defined by 40 C.F.R. 51.166(b)(44).

(196) "Preheater kiln" means a kiln in which the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(197) "Prevention of Significant Deterioration Program" or "PSD Program" means a major source preconstruction program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.166 or 52.21.

(198) "Project" means a physical change in or change in method of operation of an existing major stationary source.

(199) "Projected actual emissions" means:

(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one (1) of the five (5) years, in a twelve (12) month period, following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if:

1. The project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; and

2. Full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source; or

(b) The maximum annual rate, in tons per year, at which an emissions unit, before beginning actual construction, is projected to emit a regulated NSR pollutant, if the source:

1.a. Considers all relevant information, including historical operational data and the company's own representations of expected and highest projected business activity, filings with the cabinet and the U.S. EPA, and compliance plans under the Kentucky SIP;

b. Includes fugitive emissions and emissions associated with startups, shutdowns, and malfunctions; and

c. Excludes, in calculating any increase in emissions that results from a project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the project, including any increased utilization due to product demand growth; or

2. Elects to use the emissions unit's potential to emit, in tons per year, instead of using subparagraph 1. of this paragraph to determine projected actual emissions.

(200) "psia" means pounds per square inch absolute.

(201) "psig" means pounds per square inch gage.

(202) "RACT/BACT/LAER Clearinghouse" or "RBLC" means the U.S. EPA's online collection of previous RACT/BACT/LAER determinations.

(203) "Reactivation of a very clean coal-fired EUSGU" is defined by 40 C.F.R. 51.166(b)(37).

(204) "Reasonable further progress" is defined by 42 U.S.C. 7501(1). For purposes of this definition, "administrator" means the U.S. EPA.

(205) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65.

(206) "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N; 40 C.F.R. Part 53; 40 Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.

(207) "Regulated NSR pollutant" means **[the following]**:

(a) **For 401 KAR 51:017:**

**1. A pollutant for which a national ambient air quality standard has been promulgated and the following [any] constituents or precursors to such pollutant:**

**a.[1.] Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas:**

**b.[2.] Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas:**

**c.[3.] Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas unless the Cabinet demonstrates to the EPA administrator's satisfaction or EPA demonstrates [it is demonstrated] that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations:**

**d.[4.] Volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in an[any] attainment or unclassifiable area unless the Cabinet demonstrates to the EPA administrator's satisfaction or EPA demonstrates [it is demonstrated] that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations; and**

**e.[5. Particulate matter emissions.] PM<sub>2.5</sub> emissions[,] and PM<sub>10</sub> emissions [shall] include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures [for such pollutants identified by the U.S. EPA];**

**(i) On or after January 1, 2011, condensable particulate matter is included in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in permits issued pursuant to 401 KAR 51:017;**

**(ii) Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to January 1, 2011, is not based on condensable particulate matter unless required by the terms and conditions of a permit; and**

**(iii) Applicability determinations made prior to January 1, 2011, without accounting for condensable particulate matter are not considered in violation of this section;**

**2.[(b)] A pollutant subject to a[any] standard promulgated under 42 U.S.C. 7411;**

**3.[(e)] A pollutant subject to a standard promulgated under or established by 42 U.S.C. 7671 to 7671q; or**

**4.[(d)] A pollutant that otherwise is subject to regulation, as defined in subsection (231) of this section, under 42 U.S.C. 7401 to 7671q, except that any hazardous air pollutant (HAP) listed in 42 U.S.C. 7412 or added to the list pursuant to 42 U.S.C. 7412(b)(2), that has not been delisted pursuant to 42 U.S.C. 7412(b)(3), is not a regulated NSR pollutant unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under 42 U.S.C. 7408; or**

**(b) For 401 KAR 51:052:**

**1. Nitrogen oxides or volatile organic compounds; or**

**2. A pollutant for which a national ambient air quality standard has been promulgated and the following constituents or precursors to such pollutant:**

**a. Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;**

**b. Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas;**

**c. Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas unless the Cabinet demonstrates to the EPA Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations;**

**d. Volatile organic compounds and ammonia are presumed not to be precursors to PM<sub>2.5</sub> in a PM<sub>2.5</sub> nonattainment area unless the Cabinet demonstrates to the EPA Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations; and**

**e. PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures;**

**(i) On or after January 1, 2011, condensable particulate matter is included in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in permits issued pursuant to 401 KAR 51:052;**

**(ii) Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to January 1, 2011, is not based on condensable particulate matter unless required by the terms and conditions of a permit; and**

**(iii) Applicability determinations made prior to January 1, 2011, without accounting for condensable particulate matter are not considered in violation of this section.**

(208) "Replacement unit" means an emissions unit that does not generate creditable emissions reductions by shutting down the existing emissions unit that is replaced, and that:

(a)1. Is a reconstructed unit within the meaning of 40 C.F.R. 60.15(b)(1) or that completely takes the place of an existing emissions unit;

2. Is identical to or functionally equivalent to the replaced emissions unit; and

3. Does not alter the basic design parameters of the process unit.

(b) Replaces a unit that:

1. Is permanently removed from the major stationary source, is otherwise permanently disabled, or is prohibited from operating by a permit that is enforceable as a practical matter; and

2. If brought back into operation, is considered a new emissions unit.

(209) "Repowering" is defined by 40 C.F.R. 51.166(b)(36).

(210) "Responsible official" means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit; and

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25,000,000 in second quarter 1980 dollars; or

2. The delegation of authority to the representative is approved in advance by the cabinet pursuant to this subsection;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. The principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(211) "Run" means the net period of time, either intermittent or continuous within the limits of good engineering practice, when an emission sample is collected.

(212) "S" means at standard conditions.

(213) "sec" means second.

(214) "Secondary emissions" means emissions that:

(a) Occur as a result of the construction or operation of a major stationary source or major modification, and do not come from the major stationary source or major modification itself;

(b) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification that causes the secondary emissions;

(c) Include emissions from an offsite support facility that would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and

(d) Do not include emissions that come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, a train, or vessel.

(215) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment for the national ambient air quality standard for ozone.

(216) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment for the national ambient air quality standard for ozone.

(217) "Shutdown" means the cessation of an operation.

(218) "Significant" means:

(a) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
PM <sub>2.5</sub>	10 tpy direct, 40 tpy of sulfur dioxide or nitrogen oxides [for precursors]*
PM <sub>10</sub>	15 tpy
Particulate matter	25 tpy [of particulate matter emissions] [15 tpy of PM <sub>10</sub> emissions]
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H <sub>2</sub> S)	10 tpy
Total reduced sulfur (including H <sub>2</sub> S)	10 tpy
Reduced sulfur compounds (including H <sub>2</sub> S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.2 x 10 <sup>-6</sup> megagrams per year (Mg/y) (3.5 x 10 <sup>-6</sup> tpy)

Municipal waste combustor metals (measured as particulate matter)	14 Mg/y (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 Mg/y (40 tpy)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	45 [35] Mg/y (50 tpy)

\*Nitrogen oxide emissions are evaluated unless demonstrated not to be a PM<sub>2.5</sub> precursor pursuant to subsection (207)(a)1.c.(3) of this section.

(b) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in the table in paragraph (a) of this subsection, any emissions rate;

(c) For 401 KAR 51:017, in reference to an emissions rate or a net emissions increase associated with a major stationary source or major modification, that is to be constructed within ten (10) kilometers of a Class I area, an impact on that area equal to or greater than one (1) µg/m<sup>3</sup> over a twenty-four (24) hour average;

(d) For 401 KAR 51:052, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
PM <sub>2.5</sub>	10 tpy direct, 40 tpy of sulfur dioxide or nitrogen oxides [for precursors]*
PM <sub>10</sub>	15 tpy
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy

\*Nitrogen oxide emissions are evaluated unless demonstrated not to be a PM<sub>2.5</sub> precursor pursuant to subsection (207)(b)2.c.(a)(3) of this section.

(e) For 401 KAR 51:052, with the exception of the significant emissions rate for ozone in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions that exceeds the following:

1. Twenty-five (25) tons per year of volatile organic compounds or nitrogen oxides in a serious or severe ozone nonattainment area; or

2. An[Any] increase in actual emissions of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area; or

(f) For 401 KAR 51:052, with the exception of the significant emissions rate for carbon monoxide in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions of carbon monoxide that equals or exceeds fifty (50) tons per year in a serious nonattainment area for carbon monoxide in which a stationary source contribute significantly to carbon monoxide levels.

(219) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is equal to or greater than the emission level that is significant for that pollutant.

(220) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount equal to or greater than the applicable significant level as defined in subsection (218) of this section or in 42 U.S.C. 7401 to 7671q, whichever is lower for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

(221) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the PAL pollutant's applicable significant level as defined in subsection (218) of this section; or in 42 U.S.C. 7401 to 7671q, whichever is lower.

(222) "SO<sub>2</sub>" means sulfur dioxide.

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(223) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(224) "sq" means square.

(225) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(226) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in 401 KAR Chapters 50 to 65 or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(227) "Standard conditions" means:

(a) For source measurements, twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg); or

(b) For air quality determinations, twenty-five (25) degrees Celsius (seventy-seven (77) degrees Fahrenheit) and a reference pressure of 760 mm Hg (29.92 in. of Hg).

(228) "Start-up" or "startup" means the setting in operation of an affected facility.

(229) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410 that has been approved by the U.S. EPA.

(230) "Stationary source" means a building, structure, facility, or installation that emits or has the potential to emit a regulated NSR pollutant.

(231) "Subject to regulation" is defined by 40 C.F.R. 51.166(b)(48).

(232) "Submit" means to send or transmit a document, information, or correspondence in accordance with an applicable requirement.

(233) "TAPPI" means Technical Association of the Pulp and Paper Industry.

(234) "Temporary clean coal technology demonstration project" is defined by 40 C.F.R. 51.166(b)(35).

(235) "Ton" or "tonnage", for a NOx budget source, means a short ton or 2,000 pounds. For determining compliance with the NOx budget emissions limitation, total tons for a control period is calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 C.F.R. Part 96, Subpart H with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(236) "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

(237) "tpy" means tons per year.

(238) "TSS" means total suspended solids.

(239) "Uncombined water" means water that can be separated from a compound by ordinary physical means and that is not bound to a compound by internal molecular forces.

(240) "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(241) "Urban county" means a county that is a part of an urbanized area with a population greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county is classified as urban for 401 KAR Chapters 50 to 65.

(242) "Urbanized area" means an area defined by the U.S. Department of Commerce, Bureau of Census.

(243) "U.S. EPA" means the United States Environmental Protection Agency.

(244) "UTM" means Universal Transverse Mercator.

(245) "Visibility impairment" is defined by 40 C.F.R. 51.301.

(246) "Volatile organic compound" or "VOC" is defined by 40 C.F.R. 51.100(s).

(247) "yd" means yard.

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

(a) "North American Industry Classification System", 2007, as published by the Office of Management and Budget; and

(b) "Standard Industrial Classification Manual", 1987, as published by the Office of Management and Budget [~~is incorporated by reference~~].

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 200 Fair Oaks Lane, 1st floor, Frankfort, Kentucky 40601-1403, (502) 564-3999;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Frankfort Regional Office, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40601, (502) 564-3358;

(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

(3) The Standard Industrial Classification Manual is also available under Order No. PB 87-100012 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, phone (703) 487-4650.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 11, 2012

FILED WITH LRC: September 12, 2012 at 11 a.m.

CONTACT PERSON: Laura Lund, Environmental Technologist III, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, ext. 4428, fax (502) 564-4666, and email [Laura.Lund@ky.gov](mailto:Laura.Lund@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund, Environmental Technologist III

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 401 KAR Chapter 51.

(b) The necessity of this administrative regulation: This administrative regulation provides clear and consistent definitions for terms used in 401 KAR Chapter 51.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the Cabinet to provide for the prevention, abatement, and control of air pollution. The definitions contained in this administrative regulation are not more stringent than the corresponding federal definitions and assist in the fulfillment of federal and state statutes by providing clear and consistent definitions for terms used in 401 KAR Chapter 51.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the public and the regulated community by providing clear and consistent definitions for terms used in 401 KAR Chapter 51.

(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 administrative regulation is being amended in response to comments received during the public comment period. The Cabinet is adopting the relevant provisions of the most recent C.F.R.. Definitions have also been amended for consistency with the corresponding federal rules, as comments received identified discrepancies. This amendment clarifies that precursor demonstrations are to be performed to the EPA Administrator's satisfaction or by the EPA.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to ensure consis-



tency between state and federal programs and eliminate regulatory uncertainty.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides for consistency with corresponding federal definitions affecting Kentucky's New Source Review (NSR) program.

(d) How the amendment will assist in the effective administration of statutes: This amendment eliminates regulatory uncertainty by providing consistency with the corresponding federal programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals, businesses, organizations, or governments will be affected by this regulation if they are subject to any of the requirements contained in this chapter.

(4) Provide an assessment 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: This amendment maintains consistency with corresponding federal definitions affecting Kentucky's NSR program.

(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: Affected facilities will be required to apply and use the terms as defined in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not impose an increased cost to the regulated community.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): When operating in compliance, the affected facilities will not be subject to enforcement actions and penalties. Furthermore, compliance with the Clean Air Act requirements preserves and improves air quality throughout the Commonwealth.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish, nor directly or indirectly increase, any fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation contains thresholds over which facilities may be subject to permitting requirements.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 7410(a)(1) requires Kentucky to adopt and submit a plan providing for the implementation, maintenance, and enforcement of a NAAQS.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. The Clean Air Act is the federal mandate that requires states to have a plan for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality.

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. The definitions contained in this administrative regulation are not more stringent than the corresponding federal definitions.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State and local governments will be required to use definitions contained in this administrative regulation if subject to the requirements of 401 KAR Chapter 51.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5); 40 C.F.R. 51.165, 51.166; and 42 U.S.C. 7401-7671q.

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

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

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

(c) How much will it cost to administer this program for the first year? The Cabinet's existing operating budget is the source of funding for the implementation of this program.

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

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amended After Comments)

#### 401 KAR 51:017. Prevention of significant deterioration of air quality.

RELATES TO: KRS 224.10-100, 40 C.F.R. 51 Subpart I, Appendix S, sec. IV, Part 51, Appendix W, 51.166, 52.21, 52.26, 53, 58 Appendix A, 60, 61, 63, 70.6, 81.318, 81 Subpart D, 42 U.S.C. 7401-7671q[-, 4321-4370d, EO-2009-538]

STATUTORY AUTHORITY: KRS 224.10-100(5), 40 C.F.R. 51.166, [52.21,] 42 U.S.C. 7401-7671q[-, EO-2009-538]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. [EO 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet.] This administrative regulation provides for the prevention of significant deterioration of ambient air quality. The provisions of this administrative regulation are not [different nor] more stringent than the corresponding federal requirements [regulation, 40 C.F.R. 51.166].

Section 1. Applicability. (1) This administrative regulation shall apply to the construction of a new major stationary source or a project at an existing major stationary source that commences construction after September 22, 1982, and locates in an area designated attainment or unclassifiable under 42 U.S.C. 7407(d)(1)(A)(ii) and (iii).



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(2) Except as otherwise provided in this administrative regulation, the provisions of Sections 8 to 16 of this administrative regulation shall apply to the construction of a new major stationary source or a major modification of an existing major stationary source.

(3) The owner or operator of a new major stationary source or major modification, which is subject to the requirements of Sections 8 to 16 of this administrative regulation, shall not begin actual construction without a proposed permit or proposed permit revision issued under 401 KAR 52:020 stating that the major stationary source or major modification shall meet those requirements.

(4) Applicability tests for projects. Except as provided in subsection (5) of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed according to subparagraphs 1 to 3 of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using a method specified in subparagraphs 1 and 2 of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable procedure established in paragraph (a) of the subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1(144) and (218).

(5) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 20 of this administrative regulation.

Section 2. Ambient Air Increments. (1) In areas designated as Class I or II, increases in pollutant concentration over the baseline concentration shall be limited to the following levels:

Pollutant	Maximum Allowable Increase (Micrograms per cubic meter)
<b>Class I</b>	
<b>Particulate Matter:</b>	
PM <sub>2.5</sub> , annual arithmetic mean	1
PM <sub>2.5</sub> , 24-hour maximum	2
PM <sub>10</sub> , annual arithmetic mean	4
PM <sub>10</sub> , 24-hour maximum	8
<b>Sulfur Dioxide:</b>	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
<b>Nitrogen Dioxide:</b>	
Annual arithmetic mean	2.5
<b>Class II</b>	
<b>Particulate Matter:</b>	
PM <sub>2.5</sub> , annual arithmetic mean	4
PM <sub>2.5</sub> , 24-hour maximum	9
PM <sub>10</sub> , annual arithmetic mean	17
PM <sub>10</sub> , 24-hour maximum	30

<b>Sulfur Dioxide:</b>	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
<b>Nitrogen Dioxide:</b>	
Annual arithmetic mean	25

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 3. Ambient Air Ceilings. The concentration of a regulated NSR pollutant shall not exceed the concentration allowed under the national secondary ambient air quality standard or under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.

Section 4. Restrictions on Area Classifications. (1) The following areas, which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks that exceed 5,000 acres in size; and

(c) National parks that exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the area, shall be designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources that may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area that as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 5. Exclusions from Increment Consumption. (1) Pursuant to notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 52:100, the cabinet may exclude the following concentrations in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources that have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from these sources before the effective date of the order;

(b) Concentrations attributable to the increase in emissions from sources that have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to a federal statute over the emissions from those sources before the effective date of the plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources affected by plan revisions approved by the Administrator of the U.S. EPA as meeting the criteria established in subsection (3) of this section.

(2)(a) Exclusion of concentrations shall not apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the curtailment plan to which subsection (1)(b) of this section refers, whichever is applicable.

(b) If both an order and curtailment plan are applicable, an exclusion shall not apply more than five (5) years after the later of the two (2) effective dates.

(3) For excluding concentrations pursuant to subsection (1)(d) of this section:

(a) The time period over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides

would occur shall be specified and shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) The time period for excluding certain contributions in accordance with paragraph (a) of this subsection shall not be renewable;

(c) An emissions increase from a stationary source shall not occur that will:

1. Impact a Class I area or an area in which an applicable increment is known to be violated; or

2. Cause or contribute to the violation of a national ambient air quality standard; and

(d) Limitations shall be in effect at the end of the time period established in paragraph (a) of this subsection, which ensure that the emissions levels from stationary sources affected by the SIP revision shall not exceed the levels occurring from those sources before the revision was approved.

Section 6. Stack Heights. (1) The degree of emissions limitation required for control of an air pollutant under this administrative regulation shall not be affected by:

(a) So much of the stack height of a source as exceeds good engineering practice; or

(b) Another dispersion technique.

(2) Subsection (1) of this section shall not apply to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

Section 7. Exemptions. (1) Sections 8 to 16 of this administrative regulation shall not apply to a particular major stationary source or major modification, if:

(a) The owner or operator:

1. Obtained the necessary federal, state, and local preconstruction approval effective before September 22, 1982;

2. Commenced construction before September 22, 1982; and

3. Did not discontinue construction for a period of eighteen (18) months or more.

(b) 1. The major stationary source is a nonprofit health institution, a nonprofit educational institution, or a major modification at such an institution; and

2. The Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements.

(c) The source or modification is a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants with thermal dryers;

2. Kraft pulp mills;

3. Portland cement plants;

4. Primary zinc smelters;

5. Iron and steel mills;

6. Primary aluminum ore reduction plants;

7. Primary copper smelters;

8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9. Hydrofluoric, sulfuric, or nitric acid plants;

10. Petroleum refineries;

11. Lime plants;

12. Phosphate rock processing plants;

13. Coke oven batteries;

14. Sulfur recovery plants;

15. Carbon black plants, furnace process;

16. Primary lead smelters;

17. Fuel conversion plants;

18. Sintering plants;

19. Secondary metal production plants;

20. Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140;

21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;

22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

23. Taconite ore processing plants;

24. Glass fiber processing plants;

25. Charcoal production plants;

26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or

27. Another stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

(d) The source or modification is a portable stationary source that has previously received a permit under this administrative regulation; and

1. The owner or operator proposes to relocate the source, and the emissions of the source at the new location will be temporary;

2. The emissions from the source will not exceed its allowable emissions;

3. The emissions from the source will not impact a Class I area or an area where an applicable increment is known to be violated; and

4.a. Reasonable notice is given to the cabinet prior to the relocation identifying the proposed new location and the probable duration of operation at the new location.

b. Notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet pursuant to this subsection.

(e) The source or modification was not subject to this administrative regulation with respect to particulate matter requirements in effect before July 31, 1987, and the owner or operator:

1. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable SIP before July 31, 1987;

2. Commenced construction within eighteen (18) months after July 31, 1987; and

3. Did not discontinue construction for a period of eighteen (18) months or more and completed construction within a reasonable period of time.

(f) 1. The source or modification was subject to this administrative regulation for particulate matter requirements in effect before July 31, 1987, and the owner or operator submitted an application for a permit under the applicable permit program before that date; and

2. The cabinet subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect.

(2) Sections 8 to 16 of this administrative regulation shall not apply to a major stationary source or major modification for a particular pollutant if the owner or operator demonstrates that, for that pollutant, the source or modification is located in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(3) Sections 9, 11, and 13 of this administrative regulation shall not apply to a proposed major stationary source or major modification for a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from a modification:

(a) Will not impact a Class I area or an area where an applicable increment is known to be violated; and

(b) Will be temporary.

(4) Sections 9, 11, and 13 of this administrative regulation, as applicable to a maximum allowable increase for a Class II area, shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT will be less than fifty (50) tons per year.

(5) The cabinet may exempt a proposed major stationary source or major modification from the monitoring requirements of Section 11 of this administrative regulation for a particular pollutant, if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification will cause air quality impacts in an area, which are less than the amounts listed in the following table; or

Pollutant	Air Quality Level	Averaging Time
Carbon monoxide	575 µg/m <sup>3</sup>	8-hour average

# VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

Nitrogen dioxide	14 µg/m <sup>3</sup>	annual average
PM <sub>2.5</sub>	4 µg/m <sup>3</sup>	24-hour average
PM <sub>10</sub>	10 µg/m <sup>3</sup>	24-hour average
[Particulate matter]	10 µg/m <sup>3</sup> of PM <sub>10</sub>	24-hour average
Sulfur dioxide	13 µg/m <sup>3</sup>	24-hour average
Ozone	A de minimis air quality level is not provided for ozone. However, a net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to this administrative regulation shall be required to perform an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1 µg/m <sup>3</sup>	3-month average
Fluorides	0.25 µg/m <sup>3</sup>	24-hour average
Hydrogen sulfide	0.2 µg/m <sup>3</sup>	1-hour average
Total reduced sulfur	10 µg/m <sup>3</sup>	1-hour average
Reduced sulfur compounds	10 µg/m <sup>3</sup>	1-hour average

(b) The concentrations of the pollutant in the area that the source or modification will affect are less than the concentrations listed in the table in paragraph (a) of this subsection, or the pollutant is not listed in the table.

(6) Permitting requirements equivalent to Section 9(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for nitrogen oxides, if:

(a) The owner or operator of the source or modification submitted an application for a permit or permit revision under the applicable permit program before the date on which the provisions embodying the maximum allowable increase took effect in the Kentucky SIP; and

(b) The cabinet subsequently determined that the application as submitted before that date was complete.

(7) Permitting requirements equivalent to Section 10(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for PM<sub>10</sub>, if:

(a) The owner or operator of the source or modification submitted an application for a permit under the applicable permit program before the provisions embodying the maximum allowable increases for PM<sub>10</sub> took effect as part of Kentucky's SIP; and

(b) The cabinet subsequently determined that the application as submitted before that date was complete.

(8)(a) The cabinet may determine that the requirements for air quality monitoring of PM<sub>10</sub> in Section 11 of this administrative regulation shall not apply to a particular source or modification, if:

1. The owner or operator of the source or modification submitted an application for a permit under this section on or before June 1, 1988; and

2. The cabinet subsequently determines that the application as submitted before that date was complete, except for the requirements for monitoring particulate matter specified in Section 11 of this administrative regulation.

(b) The requirements for air quality monitoring of PM<sub>10</sub> in Section 11 of this administrative regulation shall apply to a particular source or modification if the owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation after June 1, 1988, and not later than December 1, 1988.

1. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes complete in accordance with Section 11 of this administrative regulation; and

2. If the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period, which may not be less than four (4) months, the data that Section 11 of this administrative regulation requires shall have been gathered over that shorter period.

(9) If the owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation before the date the provisions embodying the maximum allowable increases for PM<sub>10</sub> took effect and the cabinet subsequently determined that the application as submitted before that date was complete, the requirements of Section 9(2) of this administrative regulation shall:

(a) Not apply to a stationary source or modification for a maximum allowable increase for PM<sub>10</sub>; and

(b) Apply for the maximum allowable increases for TSP as in effect on the day the application was submitted.

Section 8. Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under the Kentucky SIP and each applicable emissions standard and standard of performance pursuant to 40 C.F.R. Parts 60 and 61.

(2) A new major stationary source shall apply BACT for each regulated NSR pollutant for which the source has the potential to emit in significant amounts.

(3) A major modification shall apply BACT:

(a) For each regulated NSR pollutant that results in a significant net emissions increase at the source; and

(b) For each proposed emissions unit at which a net emissions increase in the pollutant occurs as a result of a physical change or change in the method of operation of the unit.

(4) For phased construction projects:

(a) The cabinet shall review and modify, as appropriate, the BACT determination at the latest reasonable time occurring not later than eighteen (18) months prior to commencement of construction of each independent phase of the project; and

(b) If requested by the cabinet, the owner or operator of the applicable stationary source shall demonstrate the adequacy of a previous BACT determination for the source.

Section 9. Source Impact Analysis. (1) The owner or operator of the proposed source or modification shall demonstrate that allowable emissions increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, shall not cause or contribute to air pollution in violation of:

(a) [1] A national ambient air quality standard in an air quality control region; or

(b) [2] An applicable maximum allowable increase over the baseline concentration in any area.

(2) For purposes of PM<sub>2.5</sub>, the demonstration pursuant to subsection (1) of this section is deemed to have been made if the emissions increase from the new stationary source alone or from the modification alone would cause, in all areas, an air quality impact less than the amounts listed in the following table.

Pollutant	Averaging Time	Class I area	Class II area
PM <sub>2.5</sub>	Annual	0.06 µg/m <sup>3</sup>	0.3 µg/m <sup>3</sup>
PM <sub>2.5</sub>	24-hour	0.07 µg/m <sup>3</sup>	1.2 µg/m <sup>3</sup>

Section 10. Air Quality Models. (1) Estimates of ambient concentrations shall be based on the applicable air quality models, databases, and other requirements specified in 40 C.F.R. Part 51, Appendix W, "Guideline on Air Quality Models" Appendix A.

(2) If an air quality model specified in 40 C.F.R. Part 51, Appendix W, is inappropriate, the model may be modified or another model substituted.

(a) The use of a modified or substitute model shall be:

1. Subject to notice and opportunity for public comment under 401 KAR 52:100; and

2. Approved in writing by the U.S. EPA pursuant to 40 C.F.R. 51.166(1).

(b) Methods similar to those outlined in the "Workbook for the Comparison of Air Quality Models," specified in 401 KAR 50:040, Section 1(3), shall be used to determine the comparability of air quality models.

Section 11. Air Quality Analysis. (1) Preapplication analysis.

(a) An application for a permit or permit revision under 401 KAR 52:020 and this administrative regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification will affect for each of the following:

1. For a source, each pollutant that the source will have the potential to emit in a significant amount;

2. For a modification, each pollutant that the modification will result in a significant net emissions increase.

(b) For a pollutant that does not have a national ambient air quality standard, the analysis shall contain air quality monitoring data the cabinet determines necessary to assess ambient air quality for that pollutant in an area that the emissions of that pollutant will affect.

(c) For pollutants, other than nonmethane hydrocarbons, for which a standard exists, the analysis shall contain continuous air quality monitoring data gathered to determine if emissions of that pollutant will cause or contribute to a violation of the standard or a maximum allowable increase.

(d)1. The required continuous air quality monitoring data shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application.

2. If the cabinet determines that a complete and adequate analysis may be accomplished with monitoring data gathered over a period shorter than one (1) year, that period shall be not less than four (4) months.

(e) For analysis of volatile organic compounds, the owner or operator of a proposed major stationary source or major modification who satisfies all conditions of 40 C.F.R. Part 51, Appendix S, section IV may provide postapproval monitoring data for ozone instead of providing preconstruction data as required in this section.

(f) For air quality monitoring of PM<sub>10</sub> under Section 7(8)(a) and (b) of this administrative regulation, the owner or operator of the source or major modification shall use a monitoring method approved by the cabinet pursuant to 40 C.F.R. Part 53 and shall estimate the ambient concentrations of PM<sub>10</sub> using the data collected by that approved monitoring method in accordance with estimating procedures approved by the cabinet pursuant to 40 C.F.R. Part 58, Appendix A.

(2) Postconstruction monitoring. After construction of a major stationary source or major modification, the owner or operator shall conduct ambient monitoring that the cabinet determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in an area.

(3) Operation of monitoring stations. During the operation of air quality monitoring stations, the owner or operator of a major stationary source or major modification shall meet the requirements of 40 C.F.R. Part 58, Appendix A to satisfy the air quality analysis requirements of this section.

Section 12. Source Information. The owner or operator of a proposed source or modification shall submit to the cabinet all information necessary to perform an analysis or make a determination required under this administrative regulation. (1) The information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification; and

(c) A detailed description of the system of continuous emissions reduction planned for the source or modification, emissions estimates, and any information necessary to determine that BACT will be applied.

(2) Upon request of the cabinet, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate the impact; and

(b) The air quality impacts and the nature and extent of general commercial, residential, industrial, and other growth that has occurred since August 7, 1977, in the area the source or modification will affect.

Section 13. Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils, and vegetation that will occur as a result of:

(a) The source or modification; and

(b) General commercial, residential, industrial, and other growth associated with the source or modification.

(2) The owner or operator shall not be required to provide an analysis of the impact on vegetation not having significant commercial or recreational value.

(3) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

(4) Visibility monitoring.

(a) If the cabinet requires monitoring of visibility in a Class I area impacted by the proposed new stationary source or major modification, the monitoring shall be performed using:

1. Human observations;

2. Teleradiometers;

3. Photographic cameras;

4. Nephelometers;

5. Fine particulate monitors; or

6. Other U.S. EPA-approved methods.

(b) The method selected shall be determined on a case-by-case basis by the cabinet pursuant to 40 C.F.R. 51.166.

(c) Visibility monitoring required by the cabinet in a Class I area shall be approved by the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the U.S. EPA, and the federal land manager, upon request.

Section 14. Sources Impacting Class I Areas; Additional Requirements. (1) Notice to U.S. EPA and federal land managers. The cabinet shall provide;

(a) Written notice to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of lands within a Class I area of a permit application for a proposed major stationary source or major modification that may affect the Class I area.

(b) Notice promptly after receiving the permit application. The notice shall:

1. Include a copy of all information relevant to the permit application;

2. Be given within thirty (30) days of receipt and at least sixty (60) days prior to the public hearing on the application for a permit to construct; and

3. Include an analysis of the proposed source's anticipated impacts on visibility in the Class I area.

(c) The cabinet shall also provide the federal land manager and other federal officials with a copy of the preliminary determination and shall make available to them the materials used in making that determination, promptly after the cabinet makes it. The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an advanced notification of the permit application.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of lands located in a Class I area shall have an affirmative responsibility to protect visibility and other air quality related values of the lands and to consider, in consultation with the cabinet, if a proposed source or modification will have an adverse impact on those values.

(3) Visibility analysis.

(a) The cabinet shall consider an analysis performed by the federal land manager, which is provided within thirty (30) days of the notice and analysis required by subsection (1) of this section, which shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

(b) If the cabinet finds the analysis does not demonstrate to the cabinet's satisfaction that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation may be obtained.

(4) Denial; impact on air quality related values.

(a) The federal land manager of lands located in a Class I area may demonstrate to the cabinet that the emissions from a proposed source or modification will have an adverse impact on the visibility and other air quality related values of those lands, even though the change in air quality resulting from emissions from the proposed source or modification will not cause or contribute to concentrations that will exceed the maximum allowable increases for a Class I area.

(b) If the cabinet concurs with the demonstration specified in paragraph (a) of this subsection, the cabinet shall not issue the permit or permit revision.

(5) Class I variances.

(a) The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from the source or modification will not have adverse impact on the visibility or other air quality related values of lands located in a Class I area, even though the change in air quality resulting from emissions from the source or modification will cause or contribute to concentrations that will exceed the maximum allowable increases for a Class I area as specified in Section 2(1) of this administrative regulation.

(b) If limitations are necessary, the cabinet may issue the permit or permit revision with emissions limitations necessary to assure that emissions of sulfur dioxide,  $PM_{2.5}$ ,  $PM_{10}$  [particulate matter], and nitrogen oxides will not exceed the maximum allowable increases over minor source baseline concentration for the pollutants as specified in 40 C.F.R. 51.166(p)(4), **as published on July 1, 2012**, [Section 2(1) of this administrative regulation] if:

1. The federal land manager concurs with the demonstration specified in paragraph (a) of this subsection and certifies accordingly; and

2. The other applicable requirements of this administrative regulation are met.

(6) Sulfur dioxide variance by governor with federal land manager's concurrence.

(a) The owner or operator of a proposed source or modification, which cannot be approved under subsection (5) of this section because the source cannot be constructed without exceeding a maximum allowable increase in sulfur dioxide applicable to a Class I area for a period of twenty-four (24) hours or less, may demonstrate to the Governor of the Commonwealth of Kentucky that a variance will not adversely affect the visibility or other air quality related values of the area.

(b) The governor, after consideration of the federal land manager's recommendation, if applicable, and subject to the federal land manager's concurrence, may, after notice and public hearing, grant a variance from the maximum allowable increase.

(c) If a variance is granted, the cabinet shall issue a permit or permit revision to the source or modification under the requirements of 401 KAR Chapter 52 if the other applicable requirements of this administrative regulation are met.

(7) Variance by the governor with the President's concurrence.

(a) If the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America.

(b) If the variance is approved by the President, the cabinet shall issue a permit or permit revision in accordance with the requirements of 401 KAR Chapter 52, if the other applicable requirements of this administrative regulation are met.

(8) Emissions limitations for presidential or gubernatorial variance. For a permit or permit revision issued pursuant to subsections (6) or (7) of this section, the source or modification shall comply with the emissions limitations necessary to assure that:

(a) Emissions of sulfur dioxide from the source or modification shall not, during a day on which the other applicable maximum allowable increases are exceeded, cause or contribute to concentrations that will exceed the maximum allowable increases over the baseline concentration as specified in the following table; and

Maximum Allowable Increase (Micrograms per cubic meter)
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Period of Exposure	Terrain areas	
	Low	High
24-hour maximum	36	62
3-hour maximum	130	221

(b) Emissions shall not cause or contribute to concentrations that exceed other applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than a total of eighteen (18) days that are not necessarily consecutive during an annual period.

Section 15. Public Participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100, 40 C.F.R. 51.166(q), and this administrative regulation in processing applications under this administrative regulation.

Section 16. Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982, shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52:020 or under the terms of an approval to construct.

(2)(a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval;

2. Is discontinued for a period of eighteen (18) months or more; or

3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory demonstration that an extension is justified.

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with 401 KAR Chapters 50 to 68 and other requirements of local, state, or federal law.

(4) If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, Sections 8 to 16 of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5)(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator elects to use the method specified in 401 KAR 51:001, Section 1(199)(b) to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions units for which emissions of a regulated NSR pollutant could be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

a. Baseline actual emissions;

b. Projected actual emissions;

c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and

d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by any emissions unit identified in paragraph (b)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis for:

a. Five (5) years following resumption of regular operations after the change; or

b. Ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of the regulated NSR pollutant at the emissions unit.

(d) If the emissions unit is an existing EUSGU, before beginning actual construction, the owner or operator:

1. Shall provide a copy of the information in paragraph (b) of this subsection to the cabinet, but shall not be required to obtain a determination from the cabinet before beginning actual construction; and

2. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that reports the unit's annual emissions during the calendar year that preceded submission of the report.

(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceeds the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant; and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:

a. The name, address, and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and

c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under to this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 17. Environmental Impact Statements. If a proposed source or modification is subject to action by a federal agency that may necessitate preparation of an environmental impact statement under 42 U.S.C. 4321 to 4370d (the National Environmental Policy Act), review by the cabinet conducted in accordance with this administrative regulation shall be coordinated with the broad environmental reviews under that Act and under 42 U.S.C. 7609 to the maximum extent feasible and reasonable.

Section 18. Innovative Control Technology. (1) An owner or operator of a proposed major stationary source or major modification may make a written request that the cabinet approve a system of innovative control technology.

(2) The cabinet may, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 8(2) of this administrative regulation by a date, specified by the cabinet that is not later than four (4) years from the time of start-up or seven (7) years from permit issuance;

(c) The source or modification shall meet requirements equivalent to those in Sections 8 and 9 of this administrative regulation based on the emissions rate that the stationary source employing the system of innovative control technology shall be required to meet on the date specified by the cabinet;

(d) The source or modification shall not before the date specified by the cabinet:

1. Cause or contribute to a violation of an applicable national ambient air quality standard; or

2. Impact an area in which an applicable increment is known to be violated;

(e) Section 14 of this administrative regulation relating to Class I areas has been satisfied for all periods during the life of the source or modification; and

(f) All other applicable requirements including those for public participation have been met.

(3) The cabinet shall withdraw approval to employ a system of innovative control technology if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) The proposed system fails before the specified date and contributes to an unreasonable risk to public health, welfare, or safety; or

(c) The cabinet decides that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the cabinet may allow the source or modification up to an additional three (3) years to meet the requirement for the application of BACT through use of a demonstrated system of control.

Section 19. Permit Condition Rescission. (1)(a) An owner or operator holding a permit for a stationary source or modification that contains conditions pursuant to 401 KAR 51:015 or 51:016E may request that the cabinet rescind the applicable conditions.

(b) An owner or operator of a stationary source or modification who holds a permit for the source or modification that was issued under this administrative regulation as in effect on July 30, 1987, or an earlier version of this administrative regulation, may request that the cabinet rescind the permit or a particular portion of the permit.

(2) The cabinet shall rescind a permit condition if requested and if the applicant can demonstrate to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification.

Section 20. Plant-wide Applicability Limit Provisions. The cabinet shall only approve the use of an actuals PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section.

(1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project:

1. Shall not be considered a major modification for the PAL pollutant;

2. Shall not have to be approved through Kentucky's major NSR program; and

3. Shall not be subject to the provisions of Section 16(4) of this administrative regulation concerning restrictions on relaxing enforceable emission limitations that a major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)3 of this section, a major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

(a) A list of all emissions units at the source designated as small, significant, or major, based on their potential to emit;

(b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;

(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation, including emissions associated with startup, shutdown, and malfunction; and

(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source.

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall demonstrate that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and

2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall demonstrate that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that:

1. Meets the public participation requirements in subsection (4) of this section; and

2. Contains all the requirements of subsection (6) of this section.

(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(d) Each PAL shall regulate emissions of only one (1) pollutant.

(e) Each PAL shall have a PAL effective period of ten (10) years.

(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period.

(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:

1. The level of the PAL is reduced by the amount of the emissions reductions; and

2. The reductions will be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100. The cabinet shall:

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and

(b) Address all material comments before taking final action on a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section 1 or under 42 U.S.C. 7401-7671q, whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shut down after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(f) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;

(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;

(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions;

(e) A requirement that, once the PAL expires, the major stationary source shall be subject to the requirements of subsection (8) of this section;

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;

(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;

(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format;

(i) A requirement for the owner or operator to submit the reports required under subsection (13) of this section by the required deadlines; and

(j) Any requirements necessary to implement and enforce the PAL.

(7) PAL effective period and reopening of a PAL permit.

(a) A PAL effective period shall be ten (10) years.

(b) The cabinet shall reopen a PAL permit to:

1. Correct typographical or calculation errors made in setting the PAL;

2. Reflect a more accurate determination of emissions used to establish the PAL;

3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or

4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.

(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any requirement enforceable as a practical matter and imposed on the major stationary source under the SIP; and

3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:

a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.

(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period, and the requirements of this subsection shall then apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitations under a revised permit established as follows:

1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.

b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.

2. The cabinet shall decide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.

3. The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.

(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS if the alternate monitoring system demonstrates compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 16(4) of this administrative regulation.

(9) Renewal of a PAL.

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.

2. The deadline for application submittal shall ensure that the permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;

2. A proposed PAL level;

3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL if the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is equal to or greater than eighty (80) percent of the current PAL level, unless the sum is greater than the source's potential to emit.

cant level is equal to or greater than eighty (80) percent of the current PAL level, unless the sum is greater than the source's potential to emit.

3. If the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is less than eighty (80) percent of the current PAL level, the cabinet may set the PAL at a different level if the level is determined to be:

a. More representative of the source's baseline actual emissions; or

b. Appropriate considering the following factors:

(i) Air quality needs;

(ii) Advances in control technology;

(iii) Anticipated economic growth in the area of the source;

(iv) The cabinet's goal of promoting voluntary emissions reductions;

(v) Cost effective emissions control alternatives; and

(vi) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted in conjunction with PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and

2. The cabinet has not already adjusted for the requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL emissions limitation during the PAL effective period if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a PAL major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include:

1. Identification of the emissions units contributing to the increase in emissions that cause the source's emissions to equal or exceed its PAL;

2. Demonstration that the increased PAL, as calculated in paragraph (c) of this subsection, exceeds the PAL; and

a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis with the application submittal, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years;

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained; and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.



1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plant-wide emissions of the PAL pollutant in terms of mass per unit of time;

2. A monitoring system authorized for use in the PAL permit shall be:

a. Approved by the cabinet pursuant to this subsection; and  
b. Based on sound science and meet generally acceptable scientific procedures for data quality and manipulation;

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coatings or solvents;

2. CEMS;

3. CPMS or PEMS; and

4. Emission factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant contained in or created by all materials used in or at the emissions unit;

2. If the PAL pollutant cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable performance specifications found in 40 C.F.R. Part 60, Appendix B; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval if approved by the cabinet.

(f) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

3. The owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance if the cabi-

net determines that the testing is required and technically practicable.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements of paragraphs (c) to (g) of this subsection, in conjunction with permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points; or

2. Determine that operation of the emissions unit during operating conditions if there is not a correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means if approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR 52:020, 52:030, and 52:040 that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit number;

2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action following a deviation;

6. A notification of permanent or temporary shutdown of any monitoring system including:

a. The reason for the shutdown;

b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g) of this section that is included in the permit; and

7. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210), certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable.

1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(iii)(B) shall satisfy the deviation reporting requirement;

2. The deviation report shall be submitted within the time limits prescribed by 40 C.F.R. 70.6(a)(3)(iii)(B);

3. The deviation report shall contain the following information:

a. The identification of the owner, the operator, and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published in 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established before August 10, 2006, with a different PAL if the new PAL complies with the requirements of this administrative regulation.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 11, 2012

FILED WITH LRC: September 12, 2012 at 11 a.m.

CONTACT PERSON: Laura Lund, Environmental Technologist III, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, ext. 4428, fax (502) 564-4666, and email [Laura.Lund@ky.gov](mailto:Laura.Lund@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund, Environmental Technologist III

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the prevention of significant deterioration (PSD) of ambient air quality, and applies to major stationary sources and major modifications constructing in areas that are maintaining the National Ambient Air Quality Standards (NAAQS).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to continue to receive full approval of the PSD program into the Kentucky State Implementation Plan (SIP) and remain the PSD permitting authority.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation conforms to 42 U.S.C. 7470, which authorizes the federal PSD program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for issuing permits to stationary sources in areas where the NAAQS have been attained.

(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 is in response to a comment received during the public comment period. The Cabinet is referencing the most recent C.F.R..

(b) The necessity of the amendment to this administrative regulation: Including the date of the version of the C.F.R. being referenced eliminates uncertainty for the regulated community.

(c) How the amendment conforms to the content of the authorizing statutes: 42 U.S.C. 7410(a)(1) requires each state to adopt and submit a plan providing for the implementation, maintenance, and enforcement of a NAAQS. This amendment maintains consistency with corresponding federal requirements and eliminates regulatory uncertainty.

tency with corresponding federal requirements and eliminates regulatory uncertainty.

(d) How the amendment will assist in the effective administration of statutes: This amendment eliminates regulatory uncertainty.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any new major stationary source or any project at an existing major stationary source that commences construction after September 22, 1982, and locates in an area designated attainment or unclassifiable is affected by this administrative regulation.

(4) Provide an assessment 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: Amendments to the current regulation include the permitting elements relating to PM<sub>2.5</sub> emissions. Entities subject to this regulation are to provide PM<sub>2.5</sub> emissions data and demonstrate that the project emissions do not cause or contribute to a violation of the NAAQS. In the past, DAQ has used PM<sub>10</sub> as a surrogate for PM<sub>2.5</sub> due to inadequate test methods and the lack of implementation elements. However, the U.S. EPA has determined that the appropriate data and technology are now available and the use of the PM<sub>10</sub> surrogacy policy is no longer allowed.

(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: Affected facilities' permit applications will be required to provide emissions data for PM<sub>2.5</sub> and demonstrate that the project's emissions do not cause or contribute to a violation of the PM<sub>2.5</sub> NAAQS.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected facilities will incur the cost necessary to obtain a permit that includes an evaluation of PM<sub>2.5</sub> emissions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): When operating in compliance, the affected facilities will not be subject to enforcement actions and penalties. Furthermore, compliance with the Clean Air Act requirements preserves and improves air quality throughout the Commonwealth.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish, nor directly or indirectly increase, any fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation only applies to new major stationary sources, or an existing major stationary source with a project, that commences construction after September 22, 1982, and is located in an area designated attainment or unclassifiable.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. As a SIP-approved state for the PSD program under 40 C.F.R. 51.166, recent changes in the federal PSD program make it necessary to revise this regulation to maintain federal approvability. 42 U.S.C. 7410(a)(1) requires Kentucky to adopt and submit a plan providing for the implementation, maintenance, and enforcement of a NAAQS.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. The Clean Air Act requires applicable sources demonstrate that any major construction or major modification will not cause emissions to cause or contribute to a violation of the NAAQS. 40 C.F.R. 51.166 is the federal rule that provides the framework to establish a plan and requirements necessary to receive full approval into the Kentucky SIP.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is no more stringent than the federal rule, codified in 40 C.F.R. 51.166, and no more stringent than the federal mandate established by 42 U.S.C. 7401-7626.

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division for Air Quality will continue to implement and enforce the PSD program. Also, state and local governments constructing or modifying a major stationary source in an area classified as attainment or unclassified will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), (26); 40 C.F.R. 51.166; and 42 U.S.C. 7401-7671q.

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

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

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

(c) How much will it cost to administer this program for the first year? The Cabinet's existing operating budget is the source of funding for the implementation of this program.

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

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amended After Comments)

#### 900 KAR 6:060. Timetable for submission of Certificate of Need applications.

RELATES TO: KRS 216B.010, 216B.062, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1, 216B.062(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.062(1) and (2) require the cabinet to promulgate

administrative regulations to establish timetables and batching groups for applications for certificates of need. This administrative regulation establishes the timetable for submission of application requirements necessary for the orderly administration of the Certificate of Need Program.

Section 1 Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding Certificate of Need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(3) "Formal review" means the review of applications for Certificate of Need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(4) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer nursing home beds.

(5) "Nonsubstantive review" is defined by KRS 216B.015(17).

(6) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(7) "Public notice" means notice given through:

- (a) Public information channels; or
- (b) The cabinet's Certificate of Need Newsletter.

Section 2. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and 900 KAR 6:075 shall be as established in this subsection:

(a) Public notice for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment, Level I psychiatric residential treatment facility (Level 1 PRTF), Level II psychiatric residential treatment facility (Level II PRTF), and new technological developments shall be provided on the third Thursday of the following months:

- 1. January; and
- 2. July.

(b) Public notice for residential hospice facilities, hospice agencies, and home health agencies shall be provided on the third Thursday of the following months:

- 1. February; and
- 2. August.

(c) Public notice for ground ambulance providers, private duty nursing services, mobile services, and rehabilitation agencies shall be provided on the third Thursday of the following months:

- 1. March; and
- 2. September.

(d) Public notice for day health care programs, prescribed pediatric extended care facilities, and personal care beds shall be provided on the third Thursday of the following months:

- 1. April; and
- 2. October.

(e) Public notice for long-term care beds, acute care hospitals including all other State Health Plan covered services to be provided within the proposed acute care hospital, acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency beds, limited services clinics, ambulatory care centers, freestanding ambulatory surgical centers, outpatient health care centers, and birthing centers shall be provided on the third Thursday of the following months:

- 1. May; and
- 2. November.

(f) Public notice for intermediate care beds for mental retardation and developmentally disabled facilities shall be provided on the third Thursday of the following months:

- 1. June; and
- 2. December.

(g) A proposal not included in paragraphs (a) through (f) of this

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

subsection shall be placed in the cycle that the cabinet determines to be most appropriate by placing it in the cycle with similar services.

(2) In order to have an application deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) calendar days, but not more than eighty (80) calendar days, prior to the date of the desired public notice. Initial applications[Applications] filed more than eighty (80) days prior to the desired public notice shall be returned to the submitter with the prescribed fee set forth in 900 KAR 6:020.

Section 3. An application filed pursuant to KRS 216B.095(3)(a) through (e) may be filed at any time.

CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2012

FILED WITH LRC: September 13, 2012 at 11 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.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi, 564-9592

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Cabinet's timetable for submission of Certificate of Need applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.010, 216B.062, and 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.062, and 216B.990 by establishing the timetable for submission of Certificate of Need applications.

(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 KRS 216B.010, 216B.062, and 216B.990 by establishing the timetables for submission of Certificate of Need applications.

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

(a) How the amendment will change this existing administrative regulation: This amendment will provide instructions so that applications filed outside the batching cycle will be returned with the appropriate filing fee.

(b) The necessity of the amendment to this administrative regulation: The Office of Health Policy must receive and process Certificate of Need applications within specified timeframes. This amendment provides more concise instructions to applicants to accomplish that task.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 216B.062, applications for certificates of need shall be submitted according to timetables established by the cabinet by promulgation of administrative regulation, pursuant to the provisions of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: Promulgation of this amended administrative regulation under KRS Chapter 13A shall provide more concise instructions regarding the submission of an application for inclusion in an appropriate batching cycle to assure that applications will be eligible for consideration at set intervals.

(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 about 160 entities that file a Certificate of Need application each year.

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

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

regulation or amendment: As the timetables set forth in the administrative regulation are currently established and operational, no new action will be required for regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the timetables set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide more concise instructions regarding the timeframe for submission of applications and instructions that applications filed outside the batching cycle will be returned with the filing fee.

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

(a) Initially: No additional costs will be incurred to implement this regulation as we already utilize these timetables as part of our normal operations.

(b) On a continuing basis: No additional costs will be incurred to implement this regulation 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 to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. As stated above, the timetables are already used as part of our normal operations so no additional funding will be required.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Office of Health Policy within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.062, 216B.990.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have no impact on the expenditures or revenues of the Office of Health Policy.

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

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

(c) How much will it cost to administer this program for the first year? In the first year the administrative regulation will not result in a cost for this program.

(d) How much will it cost to administer this program for subsequent years? In the subsequent years the administrative regulation will not result in a cost for this program.

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of Health Policy**  
**(Amended after Comments)**

**900 KAR 6:090. Certificate of Need filing, hearing, and show cause hearing.**

RELATES TO: KRS 216B.010,[216B.062:] 216B.085, 216B.086, 216B.090, 216B.095, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements for filing, hearing, and show cause hearings necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding Certificate of Need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(3) "Days" means calendar days, unless otherwise specified.

(4) "Formal review" means the review of applications for Certificate of Need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(5) "Nonsubstantive review" is defined by KRS 216B.015(17).

(6) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(7) "Office or clinic" means the physical location at which health care services are provided.

(8) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the Certificate of Need and will become the licensee of the proposed health service or facility.

(9) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(10) "Proposed findings" means the submission of a proposed final order by the applicant or an affected party for review and consideration by the hearing officer. ~~["Primarily" means a simple majority or something that occurs at least fifty-one (51) percent of the time.]~~

(11) "Proposed service area" means the geographic area the applicant proposes to serve.

(12) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(13) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(14) ~~["Qualified academic medical center" means:~~

~~(a) An institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;~~

~~(b) An institution, organization, or other entity which directly or indirectly owns or is under common control or ownership with an accredited medical school operated within the Commonwealth of Kentucky; or~~

~~(c) An individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of supporting or operating in support of an institution, organization, entity, or other person of a type or types referenced in paragraph (a) or (b) of this subsection.~~

(15)] "Secretary" is defined by KRS 216B.015(25).

~~(15)](16)]~~ "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Filing. (1) The filing of all documents required by this administrative regulation shall be made with the Office of Health Policy, CHR Building, 4 WE, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than Certificate of Need applications and proposed hearing reports, may be made by facsimile transmission if:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next business day after the due date.

(3) The Office of Health Policy shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(4) In computing any period of time prescribed by this administrative regulation, the date of notice, decision, or order shall not be included.

(5) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or legal state holiday, in which event the period shall run until 4:30 p.m. eastern time of the first business day following the Saturday, Sunday, or legal state holiday.

Section 3. Hearing. (1)(a) Hearings on Certificate of Need matters shall be held by hearing officers from the Cabinet for Health and Family Services, Health Services Administrative Hearings Branch.

(b) A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340.

(c) Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner that shall promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area not less than ten (10) days prior to the date of the hearing;

(b) Published in the Certificate of Need Newsletter, if applicable; and

(c) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if each person who requested the hearing withdraws the request by giving written notification to the Office of Health Policy that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.

(5) Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer at least three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Tape record the conference; or

2. If requested by a party to the proceedings, allow a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to

be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties or persons who will participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file with the cabinet an original and one (1) copy of the following for each affected application and serve copies on all other known parties to the proceedings:

(a) OHP - Form 3, Notice of Appearance, incorporated by reference in 900 KAR 6:055;

(b) OHP - Form 4, Witness List, incorporated by reference in 900 KAR 6:055; and

(c) OHP - Form 5, Exhibit List, incorporated by reference in 900 KAR 6:055 and attached exhibits.

(8)(a) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new OHP - Form 3, Notice of Appearance; and

2. Either:

a. Incorporate previously-filed witness lists (OHP - Form 4) and exhibit lists (OHP - Form 5); or

b. File an amended OHP - Form 4 and OHP - Form 5.

(b) A new party to the hearings shall file an original OHP - Form 3, OHP - Form 4, and OHP - Form 5.

(c) Forms shall be filed in accordance with subsection (7) of this section.

(9) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(10) Each party shall have the opportunity to:

(a) Present its case;

(b) Make opening statements;

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make closing statements; and

(f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, other matters relevant to the issues.

(11) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(12) The hearing officer may:

(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed;

(b) Act to exclude irrelevant, immaterial, or unduly repetitious evidence; and

(c) Question any party or witness.

(13) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed at the discretion of the hearing officer.

(14) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(15) Witnesses shall be examined under oath or affirmation.

(16) Witnesses may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(17) The hearing officer may accept documentary evidence in the form of copies of excerpts if:

(a) The original is not readily available;

(b) Upon request, parties are given an opportunity to compare the copy with the original; and

(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (OHP - Form 5) and filed with the hearing officer and other parties at least:

1. Seven (7) days before the hearing for formal review applications; or

2. Five (5) days before the hearing for nonsubstantive review applications.

(18) A document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(19) The hearing officer may take official notice of facts which are not in dispute or of generally-recognized technical or scientific facts within the agency's special knowledge.

(20) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open. The conclusion of the hearing shall occur when the additional information is timely filed or at the end of the designated time period, whichever occurs first.

(21) In a hearing on an application for a Certificate of Need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(22) If all parties agree to waive the established decision date, the hearing officer shall render a decision within sixty (60) days of the filing of proposed findings.

(23) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 4. Show Cause Hearing. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine if a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6 or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) Unless initiated by the cabinet, in order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation which demonstrates that there is probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(3) Based upon the materials accompanying the request for a show cause hearing, the cabinet shall determine if sufficient cause exists to conduct a hearing.

(4) The cabinet shall conduct a show cause hearing based on its own investigation pursuant to an annual licensure inspection or otherwise which reveals a possible violation of the terms or conditions which are a part of a Certificate of Need approval and license.

(5) The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a Certificate of Need approval and license at the request of any person.

(6) The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions which are a part of that Certificate of Need approval and license.

(7) Show cause hearings shall be conducted in accordance with the provisions of Section 3 of this administrative regulation.



(8) If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity~~alleging the violation, including the Cabinet, shall have the burden of establishing by a preponderance of evidence the alleged violations. The burden is met with evidence that the changed entity~~alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity;

(a) Has ~~not~~not established or is ~~not~~not operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(9)(a) ~~If~~Except as provided by paragraph (b) or (c) of this subsection, if it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her proposed findings of fact, conclusions of law, and proposed decision on whether the clinic or office meets the physician exemption criteria set forth in 900 KAR 6:135. Certificate of Need criteria for physician exemption.~~the evidence has established the following:~~

1. ~~The practice claiming the exemption is 100 percent owned in any organizational form recognized by the Commonwealth by the individual physician, dentist, or other practitioner of the healing arts or group of physicians, dentists, or other practitioners of the healing arts (hereinafter collectively referred to as "physician") claiming the exemption;~~

2. ~~The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;~~

3. ~~Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice;~~

4. ~~A physician or physicians licensed to practice and practicing in Kentucky within the practice claiming the exemption are responsible for all decisions regarding the care and treatment provided to patients;~~

5. ~~Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic;~~

6. ~~Services or equipment covered by the State Health Plan that are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption;~~

7. ~~Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption; and~~

8. ~~Nothing in this section shall limit or prohibit the continued operation of an office or clinic that was established and in operation prior to January 31, 2006, and operating pursuant to and in accordance with the following:~~

a. ~~Provisions of a Certificate of Need advisory opinion issued specifically with respect to that office or clinic;~~

b. ~~Provisions of an Attorney General opinion issued specifically with respect to that office or clinic; or~~

c. ~~An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.~~

(b) A practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

1. Compliance with paragraph (a) 1, 4, 5, and 6 of this subsection;

2. The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including interpretations by or through teleradiology; and

3. The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.

(c) An office or clinic owned and operated by a Qualified Academic Medical Center shall demonstrate the following:

1. The physician or physicians providing care and treatment to the patients of the office or clinic shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center; and

2.a. ~~The office was established and in operation prior to January 31, 2006;~~

b. ~~The office does not provide any services or equipment covered by the State Health Plan; or~~

c. ~~At the time the office began providing care and treatment to patients, it was not located in a county designated as a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located.]~~

(10) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(11) The notice shall advise the person of:

(a) The allegations against the person;

(b) Any facts determined to exist which support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(12) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable.

(13) At least seven (7)~~[business]~~ days prior to all hearings required or requested pursuant to KRS Chapter 216B, with the exception of hearings involving applications for or revocation of a Certificate of Need, all persons or entities wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following with the cabinet and serve copies on all other known parties to the proceedings:

(a) OHP - Form 3, Notice of Appearance;

(b) OHP - Form 4, Witness List; and

(c) OHP - Form 5, Exhibit List and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall tender findings of fact and a proposed decision to the secretary.

(15) Within thirty (30) days of the receipt of the findings of fact and proposed decision from the hearing officer, the secretary shall issue a final decision on the matter.

(16) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(17) If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(18) If the person is found to have violated any of the terms or conditions of any Certificate of Need approval and license as a result of a show cause hearing conducted pursuant to subsection (4) of this section, the cabinet shall take the following action:

(a) If the person had not previously been found to be in violation of the terms and conditions which were made a part of the person's Certificate of Need approval and license, the person shall be given a period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the Certificate of Need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions which were a part of the person's Certificate of Need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

(19) The deadlines established with respect to hearings shall be modified if agreed to by all parties and the hearing officer.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

regulation prior to its adoption, as required by KRS 156.070(4)

CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2012

FILED WITH LRC: September 13, 2012 at 11 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.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for filing, hearing, and show cause hearing for the Certificate of Need program. Language in this regulation related criteria that exempts physicians from the Certificate of Need program has been deleted as it is now included in regulations – 900 KAR 6:130 – Certificate of Need criteria for physician exemption. Language was added to this regulation to clarify that if all parties agree to waive the established hearing decision date, the hearing officer must still render a decision within sixty (60) days of the filing of proposed findings and clarify that parties wishing to participate in the hearing have 7 days rather than 7 business days to provide notice. Also, language was added to reference regulation 900 KAR 6:130 for specific information about physician exemption.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute: KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990 by establishing the guidelines for filing, hearing, and show cause hearing for the Certificate of Need program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990 by establishing the guidelines for filing, hearing, and show cause hearing for the Certificate of Need program.

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

(a) How the amendment will change this existing administrative regulation: Language in this regulation related to criteria that exempts physicians from the Certificate of Need program has been deleted as it is now included in regulation – 900 KAR 6:130 – Certificate of Need criteria for physician exemption. Language was added to this regulation to clarify that if all parties agree to waive the established hearing decision date, the hearing officer must still render a decision within sixty (60) days of the filing of proposed findings and clarify that parties wishing to participate in the hearing have 7 days rather than 7 business days to provide notice. Also, language was added to reference regulation 900 KAR 6:130 for specific information about physician exemption.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to move language in this regulation related to filing of documents for to the Certificate of Need Program as well as criteria that exempts physicians from the Certificate of Need program to a new regulation – 900 KAR 6:130 – Certificate of Need criteria for physician exemption. Language was added to this regulation to clarify that if all parties agree to waive the established hearing decision date, the hearing officer must still render a decision within sixty (60) days of the filing of proposed findings and clarify that parties wishing to participate in the hearing have 7 days rather than 7 business days to provide notice. Also, language was added to reference regulation 900 KAR 6:130 for specific information about physician exemption.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirements of KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990 which relate to hearings and show cause hearings.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide instructions related to hearing and show cause hearing for the orderly administration of the Certificate of Need Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities. Approximately 160 applications for Certificate of Need are received annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the guidelines for hearing and show cause hearing for the Certificate of Need program set forth in the administrative regulation are currently established and operational, no new action will be required of regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the guidelines for hearing and show cause hearing for the Certificate of Need program set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities are benefited as information related to filing and physician exemption criteria is being moved to another regulation making this regulation clearer and more concise.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

(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 does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Office of Health Policy within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have no impact on the expenditures or revenues of the Office of Health Policy.

(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 admin-



istrative regulation will not generate any revenues during the first year.

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

(c) How much will it cost to administer this program for the first year? In the first year the administrative regulation will not result in a cost for this program.

(d) How much will it cost to administer this program for subsequent years? In the subsequent years the administrative regulation will not result in a cost for this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Health Policy  
(Amended after Comments)**

**900 KAR 6:130. Certificate of Need criteria for physician exemption.**

RELATES TO: KRS 216B.010, 216B.020, 216B.040, 216B.990  
STATUTORY AUTHORITY: KRS 194A.030, 194A.050,  
216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements for physician exemption criteria necessary for the orderly administration of the Certificate of Need Program.

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

(2) "Entity" means any legally recognized business entity in which an individual or group may practice its profession including a professional limited liability company, professional service corporation, partnership, or sole proprietor.

(3) "Evaluation and Management codes" means those codes recognized by the American Medical Association as procedures involving evaluation of patients and management of patient care in the Current Procedure Terminology® references.

(4) "Office" or "clinic" means the physical location at which health care services are provided by a physician, dentist, advanced practice registered nurse, licensed clinical social worker, speech therapist, occupational therapist, physical therapist, psychologists, or other practitioner of the healing arts.

(5) "Owner" means a "person" as defined in KRS 216B.015(21) who is applying for the Certificate of Need and will become the licensee of the proposed health service or facility.

(6) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(7) "Practitioner of the healing arts" is defined in KRS 311.271.

(8) "Primarily" means a simple majority or something that occurs at least fifty-one (51) percent of the time.

(9) "Qualified academic medical center" means:

(a) An institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;

(b) An institution, organization, or other entity which directly or indirectly owns or is under common control or ownership with an accredited medical school operated within the Commonwealth of Kentucky; or

(c) An individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of supporting or operating in support of an institution, organization, entity, or other person referenced in

paragraph (a) or (b) of this subsection.

Section 2. Physician non-exemption due to operation of an ambulatory surgical center. An office or clinic that is operating an ambulatory surgical center pursuant to KRS 216B.095(7) shall not be exempt from the Certificate of Need requirements.

Section 3. Physician exemption from Certificate of Need. (1) An office or clinic that would otherwise be required to obtain a Certificate of Need shall be exempt from Certificate of Need pursuant to KRS 216B.020(2) if:

(a) The practice claiming the exemption is 100 percent owned in an organizational form recognized by the Commonwealth as one in which the listed professions can be practiced by the individual physician, dentist, advanced practice registered nurse, licensed clinical social worker, speech therapist, occupational therapist, physical therapist, psychologist, or other practitioner of the healing arts or group of physicians, dentists, or advanced practice registered nurses, licensed clinical social workers, speech therapists, occupational therapists, physical therapists, psychologists, or other practitioners of the healing arts (hereinafter collectively referred to as "physician") claiming the exemption;

(b) The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;

(c) Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice;

(d) A physician or physicians licensed to practice and practicing in Kentucky within the practice and claiming the exemption are responsible for all decisions regarding the care and treatment provided to patients;

(e) Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic;

(f) Services or equipment covered by the State Health Plan that are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption;

(g) Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption; and

(h) Nothing in this section shall limit or prohibit the continued operation of an office or clinic that was established and in operation prior to January 31, 2006, and operating pursuant to and in accordance with the following:

1. Provisions of a Certificate of Need advisory opinion issued by the Office of Health Policy specifically with respect to that office or clinic ~~an identified office or clinic that sought the opinion~~;

2. Provisions of an Attorney General opinion issued specifically with respect to that office or clinic; or

3. An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.

(2) A practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

(a) Compliance with subsections (1)(a), (d), (e), and (f) of this section;

(b) The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including interpretations by or through teleradiology; and

(c) The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.

(3) An office or clinic owned and operated by a Qualified Academic Medical Center shall demonstrate the following:

(a) The physician or physicians providing care and treatment to the patients of the office or clinic shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center; and

(b) 1. The office was established and in operation prior to January 31, 2006;

2. The office does not provide any services or equipment covered by the State Health Plan; or

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

3. At the time the office began providing care and treatment to patients, it was not located in a county designated as a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located.

Section 4. Physician non-exemption due to operation of an ambulatory surgical center. An office or clinic that is operating an ambulatory surgical center pursuant to KRS 216B.095(7) shall not be exempt from Certificate of Need.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

CARRIE BANAHAN, Executive Director  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2012

FILED WITH LRC: September 13, 2012 at 11 a.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: Carrie Banahan or Chandra Venettozzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides clarification related to physician exemption from Certificate of Need. Language related to this subject was formerly included in 900 KAR 6:090 – Certificate of Need hearing and show cause hearing and is being moved to a separate administrative regulation for clarity. Also, as a result of the passage of House Bill 458, language was added to clearly state that physician owned ambulatory surgery centers are not exempt from Certificate of Need.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide clear and concise information related to physician exemption from the Certificate of Need program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 216B.010, 216B.020, 216B.040, 216B.990 by providing clear and concise information related to physician exemption from the Certificate of Need Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide clear and concise information related to physician exemption from the Certificate of Need Program.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities. Approximately 160 applications for Certificate of Need are filed annually.

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

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

regulation or amendment: The entities will have clear and concise information related to physician exemption from the Certificate of Need Program.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities meeting the exemption status will not have to file an application for Certificate of Need.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

(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 does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Office of Health Policy within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.020, 216B.040, 216B.990.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have no impact on the expenditures or revenues of the Office of Health Policy.

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

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

(c) How much will it cost to administer this program for the first year? In the first year the administrative regulation will not result in a cost for this program.

(d) How much will it cost to administer this program for subsequent years? In the subsequent years the administrative regulation will not result in a cost for this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

**PERSONNEL CABINET  
Office of the Secretary  
(Amendment)**

**101 KAR 2:210. 2013[2012] Plan Year Handbook for the Public Employee Health Insurance Program.**

RELATES TO: KRS 18A.030, 18A.225, 18A.2254  
STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2013[2012] Plan Year as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2013[2012] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. Incorporation by Reference. (1) "2013[2012] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2013[2012] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: August 31, 2012

FILED WITH LRC: September 14, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2012 at 10:00 a.m. at 501 High Street, 3rd Floor, Conference Room, 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 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 October 31, 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: Joe R. Cowles, Deputy Executive Director, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-7603.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Joe R. Cowles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2013 plan year Benefits Selection Guide for health benefit plans offered through the Public Employee Health Insurance Program. The Benefits Selection Guide is distributed to all health plan participant plan holders.

The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the 2013 self-insured plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254 requires the Personnel Cabinet to incorporate by reference the 2013 plan year handbook distributed to the public employees covered by the Public Employee Health Insurance Program in an administrative regulation. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the statute authorizing the self-insured health benefit plan and the statute mandating the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2013 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(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 an amendment. This administrative regulation constitutes a compilation of the health contributions, benefit options, eligibility rules, and exclusions for participants of the Public Employee Health Insurance Program for the plan year 2013. The 2013 Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect the health benefit plans to public employees for the 2013 plan year and to comply with the statutory mandate to annually update the regulations incorporating the plan year handbook contained in KRS 18A.2254.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2013 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the 2013 plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: State and select county and local government entities, including employees of the local school boards and districts, and retirees will be affected. More specifically, this encompasses approximately 158,106 eligible employees under KRS 18A.225(1)(a) and a total of 271,819 (which would include qualifying beneficiaries and dependents).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by entities to comply with the incorporation of these provisions in an administrative regulation. The 2013 Benefits Selection Guide will

provide notice to the public employees covered under the Public Employee Health Insurance Program concerning the health benefit plans offered for the 2013 plan year; specifically, the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for the 2012 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Complying with this administrative regulation will have a cost impact to participants or beneficiaries covered under the Public Employee Health Insurance Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants and dependents covered under the Public Employee Health Insurance Program for plan year 2013 will have comparable benefit structure to the 2013 plan year. There were necessary employee premium contribution and health benefit modifications for plan year 2013 as a result of projected health care inflation, two percent budgeted employer contribution increase for plan year 2013 and state and federal health care mandates effective January 1, 2013.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust 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: This is an amendment. The implementation of this administrative regulation will not require an increase in funding or fees.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all participants in the Public Employee Health Insurance Program which includes state government, retirees, select local government entities and employees of local school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287, and 26 U.S.C. 105, 106, 125, 152, 129 and 152 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1-7; H.R. 3590, the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (PPACA); H.R. 4872, the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (HCERA).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, school boards 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, school boards or school districts) for the first year? The administrative regulation will not generate any revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The

administrative regulation will not generate any revenues.

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law an amended administrative regulation will be promulgated in 2013 and each subsequent plan 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:

#### FINANCE AND ADMINISTRATION CABINET Department of the Controller Office of Financial Management (Amendment)

#### 200 KAR 14:011. Qualified Investments.

RELATES TO: KRS 42.500(9)-(14), 42.520, 42.525

STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2), 42.525

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.500(10) requires the State Investment Commission to promulgate administrative regulations for the investment and reinvestment of state funds. KRS 42.520(2) requires the commission to promulgate administrative regulations concerning the assignment of priorities to public depositories. KRS 42.525(1) requires the commission to promulgate administrative regulations for the investment and reinvestment of state funds and the acquisition, retention, management, and disposition of investments. This administrative regulation establishes the standards that govern the commonwealth's investment and cash management programs.

Section 1. Definitions. (1) "Commission" means the State Investment Commission.

(2) "Floating rate" means that the interest rate:

(a) That is paid on the specific security changes periodically on a pre-established schedule;

(b) May be tied directly to an index plus some spread or margin; and

(c) Includes hybrid adjustable rate mortgages if the first repricing date is less than six (6) years from the issuance date.

(3) "Hedge" means a position in a financial instrument taken to minimize or eliminate the risk associated with an existing instrument or portfolio of instruments.

(4) "Interest rate swaps" means an agreement governed by an International Swap and Derivatives Association master contract between two (2) parties to exchange, or have the conditional right to exchange, specified cash flows.

(5) "NRSO" [~~"Nationally recognized rating agency"~~] means "Nationally Recognized Statistical Ratings Organization" which is a credit rating agency that is registered with [NRSRO] as designated by the Securities and Exchange Commission, and which provides its opinion on the creditworthiness of an entity and the financial obligations issued by that entity.

(6) "Office" means the Office of Financial Management.

(7) "Options" means a contract that provides the right, but not the obligation, to buy or sell a specific amount of a security within a predetermined time period and includes specific bonds or notes, an exchange traded futures contract, or the cash value of an index.

(8) "Pools" means the investment pools that are managed by the Office of Financial Management, under the guidance of the commission.

Section 2. The commission shall:

(1) Not invest state funds in an institution or instrument that it deems unsafe and a threat to the security of state funds;

(2) Maintain adequate liquidity to meet the cash needs of the

state;

(3) Within the limits established by this administrative regulation, invest in securities that maximize yield or return to the Commonwealth; or (4) Not borrow money to enlarge the pool.

Section 3. The commission may: (1) Engage in securities lending;

(2) Allow inter-pool transfers to meet short term cash needs; or

(3) Within the limited term pool, if borrowing exceeds thirty-three (33) percent of the value of the pool's total assets resulting from a change in values of net pool assets at any time, the pool shall then reduce borrowing to no more than thirty-three (33) percent within three (3) business days and shall continue to use prudence in bringing the percentage of borrowing back into conformity.

Section 4[3]. Interest earned on the cash balances shall be calculated daily on an accrual basis.

Section 5[4]. Investment Criteria. (1) The criteria to determine the amount of funds per investment instrument shall be the:

- (a) Liquidity needs of the state in aggregate as budgeted;
  - (b) Rates available per instrument; and
  - (c) Safety of principal and interest.
- (2) An investment instrument shall qualify if it is specified by:
- (a) KRS 42.500;
  - (b) This administrative regulation;
  - (c) 200 KAR 14:081; or
  - (d) 200 KAR 14:091.

Section 6[5]. Investment Securities. The commission shall invest only in the following security types:

(1) U.S. Treasury, agency, and government sponsored entity agency securities with a maturity of less than seven (7) years, or an embedded put of less than three (3) years.

(2) Mortgage pass-through securities issued by U.S. government agencies or by government sponsored entities, including Government National Mortgage Association, Fannie Mae, Freddie Mac, and [government national mortgage association, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation,] Small Business Administration[, and Student Loan Marketing Association] with an average life of less than four (4) years at the time of purchase, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus. The commission may hold pass-throughs purchased under this subsection which have an average life of less than six (6) years, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus.

(3) Real estate mortgage investment conduit obligations, as defined by the Internal Revenue Code, also known as collateralized mortgage obligations, or CMOs, rated in the highest category by an NRSRO[A or higher by a nationally-recognized rating agency] with an average life of less than four (4) years at the time of purchase, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus. The commission may hold CMOs purchased under this subsection which have an average life of less than six (6) years, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus.

(4) Asset-backed securities (ABS) rated in the highest category by an NRSRO[a nationally-recognized rating agency] with an average life of four (4) years or less.

(5) U.S. dollar denominated corporate and Yankee securities issued by foreign and domestic issuers, rated in one (1) of the three (3) highest categories by an NRSRO[A or higher by a nationally-recognized rating agency], with a maturity not longer than five (5) years, or an embedded put of less than three (3) years.

(6) U.S. dollar denominated sovereign debt rated in one (1) of the three (3) highest categories by an NRSRO[A1 or higher by a nationally-recognized rating agency], with a maturity not to exceed five (5) years.

(7) Money market securities, including:

(a) Commercial paper;

(b) Certificates of deposit;[and]

(c) Bankers' acceptances issued by banks having the highest short-term rating by an NRSRO;[Eurodollars and time deposits rated in the highest short-term rating with assets in excess of one (1) billion dollars and bankers' acceptances rated A or higher.];

(d) Maturities shall be limited to 180 days[six (6) months] for bankers' acceptances and 270 days[nine (9) months] for all other money market securities.

(8) Repurchase[and reverse repurchase] agreements collateralized at a minimum of 102 percent (marked to market daily) with treasuries, agencies, and agency[collateralized] mortgage backed obligations that meet the requirements established by subsection (4) of this section, with a maximum maturity of one (1) year if executed with approved broker-dealers as provided by Section 8 of this administrative regulation and a maximum of three (3) years for the Kentucky Bank Repurchase Program participants.

(9) Municipal obligations rated in one (1) of the three (3) highest categories by an NRSRO[A or higher by a nationally-recognized rating agency], with a maturity not to exceed five (5) years. The maturity and credit restriction shall be waived for obligations issued by the Commonwealth of Kentucky or any entity within the Commonwealth of Kentucky.

(10) Mutual funds in[which at least ninety (90) percent of] the underlying holdings of the fund are in securities in which the pools could invest directly.

(11) In meeting credit standards listed previously in this section, the lowest rating issued by an NRSRO shall be used to determine compliance. The commission, at a minimum on an annual basis, shall determine which NRSRO's shall be used[Any floating rate securities which would otherwise qualify under this section except for maturity or average life restrictions].

Section 7[6]. Limits on Investment Securities. (1) U.S. agency mortgage backed securities and collateralized mortgage obligations shall not exceed twenty-five (25) percent of total pool assets in aggregate.

(2) Asset-backed securities shall not exceed twenty (20) percent of total pool assets.

(3) U.S. dollar denominated corporate and Yankee and sovereign securities issued by foreign and domestic issuers shall not exceed thirty-five (35)[twenty-five (25)] percent of an individual pool or \$25,000,000 per issuer within an individual pool[and \$25,000,000 per issuer], inclusive of commercial paper, bankers' acceptances, and certificates of deposit unless:

(a) These securities are guaranteed by the full faith and credit of the United States government; or

(b) These securities were purchased between February 19, 2009 and March 31, 2009.

(4) U.S. dollar denominated sovereign debt shall not exceed five (5) percent of any individual portfolio and \$25,000,000 per issuer.

(5) No more than ten (10) percent of total pool assets shall be invested in a single mutual fund.

(6) The credit and diversification requirements documented herein shall apply at the time of purchase based on book value for the Limited Term Pool and market value for other pools.

(7) The limits set forth in this section may be waived by unanimous vote of the commission.

Section 8[7]. Risk Management. The pools may utilize interest rate swaps, over-the-counter and exchange traded U.S. Treasury contracts and options to manage the portfolio's exposure to interest rate risk. These instruments shall only be used if the results are demonstratively superior to cash market transactions.

Section 9[8]. Pools and Operating Procedures. (1)(a) The limited-term pool shall be managed to meet the requirements of Section 2a.7 of the Investment Company Act of 1940. Terms used in this section shall have the definitions prescribed in the Investment Company Act of 1940.[Except for the Budget Reserve Trust Fund, state funds held in accounts the interest of which accrues to the General Fund shall be placed in the short-term pool or the intermediate pool.];

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(b) The limited[short]-term pool shall not purchase a security with a final maturity[duration] exceeding 397 days, except for governmental securities, which may have a final maturity of up to 762 days[one (1)-year].

(c) The weighted average maturity, adjusted for interest rate resets and demand features,[duration of the short-term pool] shall not exceed sixty (60)[ninety (90)] days; and the weighted average life, adjusted for demand features only but not interest rate resets, shall not exceed 120 days.

(d) At a minimum:

1. Ten (10) percent of the pool shall be invested in cash, direct obligations of the U.S. government or securities that mature or are subject to a demand feature payable within one (1) business day; and

2. Thirty (30) percent of the pool shall be invested in cash, direct obligations of the U.S. government, government agency discount note maturing in sixty (60) days or less or securities that mature or are subject to a demand feature payable within five (5) business days.

(e) All securities purchased for the pool shall be rated by an NRSRO.

(f) No more than five (5) percent of the pool shall be invested in illiquid securities.

(g) No more than three (3) percent of the pool shall be invested in second tier securities and no more than five-one hundredths (.05) percent of the pool shall be invested in a second tier security issuer.

(h) The net asset value of pool shares shall be computed using the amortized cost method of valuing the pool's investments.

(i) The shadow net asset value using the market value of pool holdings shall be computed no less than monthly and made public within sixty (60) days of the calculation date.

(j) Stress testing of the pool based on redemption and changes in market value shall be performed no less than quarterly and reported to the commission.

(k) Monthly portfolio listings shall be published to a public Web site and shall remain available for no less than six (6) months.

(2)(a) Except as provided by paragraph (b) of this subsection, state funds held in agency or university accounts, the interest of which accrues to the agency or university, shall be placed in the intermediate pool.

(b) These funds may be placed in the limited[short]-term pool, if the commission determines that the liquidity needs of an agency require shorter term investment.

(c) The duration of the intermediate pool shall not exceed three (3) years. ~~(3)(a) Bond proceeds from state-issued bonds may be placed in the bond proceeds pool.~~

~~(b) The bond proceeds pool shall consist of U.S. Treasury, agency and government-sponsored entity notes, bills and bonds, and repurchase agreements.~~

~~(4)(a) The portion of the Budget Reserve Trust Fund, the disposition of which the approval of the General Assembly is required, and agency funds which the commission and agency determine need not be expended for a period of two (2) years, shall be placed in the long-term pool.~~

~~(b) The duration of the long-term pool shall not exceed four and one-half (4.5) years.~~

Section 10[9]. Approved Broker-Dealers. (1) A broker-dealer who was approved by the commission prior to the effective date of this administrative regulation shall be considered an approved broker-dealer.

(2) Except as provided by subsection (1) of this section, a broker-dealer shall be approved by the commission if the broker-dealer has met the requirements established by subsection (3), (4), or (5) of this section, as applicable.

(3) An approved broker-dealer shall be a broker dealer who meets one (1) of the following qualifications:

(a) Is a primary dealer of the Federal Reserve ~~[rated A1-P1 by a nationally-recognized rating agency];~~

(b) Maintains an office in Kentucky, and has either \$25,000,000 in excess net capital or has trades that are guaranteed by a primary dealer of the Federal Reserve ~~[who is rated A1-P1 or higher by a nationally-recognized rating agency]; or~~

(c) Has a minimum of \$100,000,000 in excess net capital.

(4) An approved broker-dealer for repurchase agreements shall:

(a) ~~[Be rated A1 or higher by a nationally-recognized rating agency];~~

(b) Have transaction amounts limited to his excess net capital;

(b) ~~[(e)]~~ Have executed the:

1. Public Securities Association Master Repurchase Agreement prior to entering into a repurchase transaction; and

2. Appropriate ~~third-party custodial agreement or Custodial Undertaking[undertaking]~~ in ~~connection[Connection]~~ with Master Repurchase Agreement for ~~tri-party repurchase agreements~~; and

(c) ~~[(e)]~~ Be primary dealer of the Federal Reserve ~~[who is rated A1-P1 or higher by a nationally-recognized rating agency].~~

(5) An approved broker-dealer for hedge vehicles shall:

(a) Have at least \$100,000,000 in excess net capital;

(b) ~~[Be rated A1 or higher by a nationally-recognized rating agency];~~

(c) ~~[(e)]~~ Have market value transactions limited to his excess net capital; and

(c) ~~[(d)]~~ Have executed the:

1. International Swap ~~and Derivatives[Dealers']~~ Association Agreement prior to the implementation of a swap; and

2. Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions - U.S. Treasury Securities, prior to the implementation of an over the counter option transaction.

(6)(a) Within 180 days of the end of each broker-dealer's fiscal year, a broker-dealer shall submit a copy of the broker-dealer's audited financial statements for that fiscal year.

(b) A broker-dealer who wishes to be approved by the commission as an approved broker-dealer shall submit a copy of the broker-dealer's current audited financial statements

(7) Notwithstanding the broker-dealer requirements described in this section, the state may purchase securities directly from the issuer.

Section 11[10]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ~~"Commonwealth of Kentucky, Bond Proceeds Pool, Prospectus, (12/97)";~~

(b) ~~"Commonwealth of Kentucky, Short-term Pool, Prospectus, (12/97)";~~

(c) ~~"Commonwealth of Kentucky, Intermediate-term Pool, Prospectus, (12/97)";~~

(d) ~~"Commonwealth of Kentucky, Long-term Pool, Prospectus, (12/97)";~~

(e) "Securities Industry and Financial Markets Association Master Repurchase Agreement", [(12/08)];

(b) ~~[(f)]~~ "Custodial Undertaking in Connection with Master Repurchase Agreement, Bank of New York", [(12/08)];

(c) ~~[(g)]~~ "Custodial Undertaking in Connection with Master Repurchase Agreement, Chase Manhattan", [(12/08)];

(d) ~~[(h)]~~ "International Swap and Derivatives[Dealers'] Association Agreement", [(12/02)]; and

(e) ~~[(i)]~~ "Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions - U.S. Treasury Securities", [(12/97)];

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at State Investment Commission, Suite 76, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

F. THOMAS HOWARD, Executive Director

APPROVED BY AGENCY: September 12, 2012

FILED WITH LRC: September 12, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2012, from 10:00 a.m. to 12:00 p.m., in Room 383, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

will be given an opportunity to comment on this 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 October 31, 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: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DeVon Hankins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides the direction for investment of state funds required by KRS 42.500 (10).

(b) The necessity of this administrative regulation: This regulation is required to place limitations on investment activities in order to limit the risk of loss of state funds through imprudent investment decisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 42.500 (10) specifies particular requirements for this administrative regulation such as limits on the maturity of investments. This regulation specifies those particular limitations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on the investment of state funds and requires prudent investment activities which will limit the exposure of state funds to investment losses.

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

(a) How the amendment will change this existing administrative regulation: This regulation establishes limitations on the credit of entities in which the state may invest. This amendment tightens those restrictions for all security types while allowing for a larger investment in certain entities. The amendment also conforms the Limited Term pool restrictions to Securities and Exchange Commission Rule 2a-7. It also updates terminology to current market standards.

(b) The necessity of the amendment to this administrative regulation: This amendment brings the regulation up to the standards adopted by the State Investment Commission.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is compliant with KRS 42.500 (10).

(d) How the amendment will assist in the effective administration of the statutes: The amendment further clarifies investment activities to reduce the risk of loss of state funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation only affects actions by the Office of Financial Management.

(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: Personnel in OFM will need to assure investment purchases meet the newly modified requirements set forth in this amendment. In addition, certain additional reporting/monitoring functions are required which will be performed by current staff.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment clarifies certain requirements for the Office of Financial Management and brings

regulation into conformity with Securities and Exchange Commission Rule 2a-7.

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

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None needed.

(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 needed.

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

(9) TIERING: Is tiering applied? There is no tiering because it is not applicable.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation only affects the investment actions of the Office of Financial Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 42.500 requires the State Investment Commission to promulgate this regulation. Additionally, the regulation requires that the Limited Term pool be managed consistent with SEC Rule 2a-7 as required by current government accounting standard.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FINANCE AND ADMINISTRATION CABINET

Department of the Controller

Office of Financial Management

(Amendment)

#### 200 KAR 14:081. Repurchase Agreement.

RELATES TO: KRS 41.610, 42.500(9)-(14), 42.520, 42.525

STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2), 42.525

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.500(10) requires the State Investment Commission to promulgate administrative regulations for the investment and reinvestment of state funds. KRS 42.520(2) requires the commission to promulgate administrative regulations concerning the assignment of priorities to public depositories. KRS 42.525(1) requires the commission to promulgate administrative regulations for the investment and reinvestment of state funds and the acquisition, retention, management, and disposition of investments. This administrative regu-

lation establishes the general standards which shall apply to the employment of repurchase agreements as investment vehicles with eligible financial institutions.

Section 1. Definitions. (1) "Commission" means the State Investment Commission.

(2) "Eligible financial institution" means:

(a) A commercial bank, or savings and loan association:

1. Chartered to do business in Kentucky by the Commonwealth of Kentucky, or by an agency of the United States government; and
2. That maintains an office in Kentucky; or

(b) A broker-dealer approved pursuant to the provisions of Section 10[8] of 200 KAR 14:011.

(3) "Office" means the Office of Financial Management.

(4) "Repurchase agreement" [~~or "reverse repurchase agreement"~~] means an actual, conditional purchase or sale of securities of the United States Treasury, an agency, instrumentality, or corporation of the United States, or another security authorized for investment pursuant to KRS 42.500(9)(a) or (b), with an agreement to resell or repurchase the securities to their original owner on a specific date in the future.

Section 2. Minimum Interest Rates. Except as provided by KRS 41.610, the commission shall not invest public funds in a repurchase agreement with a yield less than could be received on a directly purchased United States Treasury security of comparable maturity.

Section 3. Reporting Requirements for Eligible Investment Institutions. The commission shall inform eligible financial institutions of the reporting requirements for the investment of state funds in eligible financial institutions established by this section. (1) An eligible financial institution shall:

(a) Submit a copy of its quarterly financial reports as furnished to Department of Financial Institutions, including accompanying schedules, to the commission within thirty (30) days from the end of each quarter; and

(b) Complete and sign the "Public Securities Association Master Repurchase Agreement, incorporated by reference in 200 KAR 14:011".

(2) An approved broker-dealer shall:

(a) Submit a copy of its annual audited financial statements and copies of quarterly financial statements, as published, to the commission; and

(b) Complete and sign the "Public Securities Association Master Repurchase Agreement", incorporated by reference in 200 KAR 14:011.

Section 4. Eligible Securities. Investment securities authorized for investment pursuant to KRS 42.500(9)(a) and (b) shall be considered eligible securities for repurchase agreements.

Section 5. Sufficiency of Securities Purchased. (1) The securities purchased shall have a market value, including accrued interest, of not less than 102 percent of the face value of the repurchase agreement.

(2) The state's custodian banking contract shall require the custodial bank [~~general depository~~] to review the sufficiency of collateral on all repurchase agreements, except those subject to a triparty agreement. The review shall occur at least every seven (7) calendar days with periodic reviews made by the office.

(3) The commission shall demand additional securities to be delivered immediately, if market conditions cause the value of the securities purchased to drop below 102 percent of the face value of the repurchase agreement.

Section 6. Status of Parties. (1) The commission and the eligible financial institutions authorized to enter into repurchase agreements:

(a) Shall be considered principals in repurchase agreements; and

(b) Shall not be considered agents for third parties.

(2) Contractual obligations shall apply to and be binding on the commission and the specific eligible financial institution with which

the repurchase agreement is initially negotiated and settled.

Section 7. Default. (1)(a) If an eligible financial institution with which the commission has entered into a repurchase agreement defaults, or is determined by the commission to be in danger of default, the commission shall set off claims and liquidate property held in respect to the repurchase agreement against obligations owing to the eligible financial institution under other repurchase agreements.

(b) Payments, deliveries, and other transfers made under a repurchase agreement shall be deemed to have been made in consideration of payments, deliveries, and other transfers made under any other repurchase agreement by the eligible financial institution.

(c) The obligation to make payments, deliveries and other transfers under a repurchase agreement may be applied against the obligation to make payments, deliveries and other transfers under any other repurchase agreements of the eligible financial institution and netted.

(2)(a) From the proceeds of liquidated property, the commission shall pay itself the full principal and accrued interest due as of the date of liquidation.

(b) Remaining cash balances shall be forwarded to the financial institution with which the repurchase agreement was originally executed.

Section 8. Kentucky Bank Repurchase Program. (1) Repurchase agreements with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with offices located in Kentucky before being placed shall meet the following criteria:

(a) A loan to deposit ratio equal to or greater than seventy (70) percent;

(b) A nonperforming loan to capital ratio of equal to or less than twenty-five (25) percent;

(c) A capital to assets ratio equal to or greater than the greater of eight (8) [seven (7)] percent or regulatory requirements; and

(d) A return on assets ratio greater than five-tenths (0.5) percent [zero].

(2) Repurchase agreements with maturities equal to or greater than 365 days with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with offices located in Kentucky shall be limited to \$5,000,000 per institution.

(3) The office shall review the financial ratios listed quarterly to determine eligibility of institutions. Existing repurchase agreements with institutions which fail to meet the minimum criteria for two (2) consecutive quarters shall be subject to call at par value by the commission. Repurchase agreements shall be placed according to:

(a) Availability of funds;

(b) Demand for funds by the institutions; and

(c) Highest loan to deposit ratio of eligible institutions.

(4)(a) A repurchase agreement with a commercial bank or savings and loan shall not be an amount in excess of its capital structure or ten (10) percent of the institution's deposits, whichever is less.

(b) The commission shall not enter into a Kentucky Bank Repurchase Program repurchase agreement with a commercial bank or savings and loan association that will cause that institution to exceed in aggregate a total of \$25,000,000 in repurchase agreements.

(5) Yield charged and collateral requirements for commercial banks and savings and loans.

(a) A commercial bank or savings and loan submitting U.S. Treasuries and agencies excluding mortgage backed securities and collateralized mortgage obligations shall be charged the same duration yield generic repurchase rate as quoted by Bloomberg Financial Markets with 102 percent collateral.

(b) A commercial bank or savings and loan submitting mortgage-backed securities and collateralized mortgage obligations shall be charged the same duration yield generic repurchase rate as posted on Bloomberg Financial Markets, plus fifty (50) basis points with 105 percent collateral.

(6) Payment for and safekeeping of purchases.



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(a) Each transaction shall be conducted on a payment-versus-delivery basis.

(b) A party shall not allow state funds to be released until delivery of adequate, negotiable collateral has been verified.

(c) Securities purchased from commercial banks or savings and loan associations in a repurchase agreement shall be received, verified, and safe-kept by the state's custodial bank or its agent.

F. THOMAS HOWARD, Executive Director

APPROVED BY AGENCY: September 12, 2012

FILED WITH LRC: September 12, 2012 at 11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on October 24, 2012, from 10:00 a.m. to 12:00 p.m., in Room 383, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this 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 October 31, 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:** DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DeVon Hankins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation governs the state's investments in repurchase agreements.

(b) The necessity of this administrative regulation: The state invests substantial funds in tri-party repurchase agreements. This regulation requires prudent use of those agreements and establishes monitoring requirements to assure safety of state funds are maintained.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This is required by KRS 42.500 (10) and establishes the limitations required by that clause.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on the investment of state funds and requires prudent investment activities which will limit the exposure of state funds to investment losses.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires the Custodial Bank to monitor repurchase agreement collateral levels, raises capitol and income requirements for entry into the link deposit program, and further restricts acceptable collateral for repurchase agreements.

(b) The necessity of the amendment to this administrative regulation: This amendment brings the regulation up to the standards adopted by the State Investment Commission.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is compliant with KRS 42.500 (10).

(d) How the amendment will assist in the effective administration of the statutes: The amendment further clarifies investment activities to reduce the risk of loss of state funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation only affects actions by the Office of Financial Management.

(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: Personnel in OFM will need to assure repurchase agreements meet the newly modified requirements set forth in this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment clarifies certain requirements for the Office of Financial Management.

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

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None needed.

(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 needed.

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

(9) TIERING: Is tiering applied? There is no tiering because it is not applicable.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation only affects the investment actions of the Office of Financial Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 42.500 requires the State Investment Commission to promulgate this regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? No cost.

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

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:

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

### FINANCE AND ADMINISTRATION CABINET Department of the Controller Office of Financial Management (Amendment)

#### 200 KAR 14:091. Guidelines for money market instruments.

RELATES TO: KRS 41.610, 42.014(1), 42.500, 42.505-42.545  
STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2), 42.525

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.525, requires the State Investment Commission to prescribe standards for the operation of the state's investment program. This administrative regulation establishes the standards which shall apply to the use of certain money market instruments which include bankers' acceptances, commercial paper, and negotiable collateralized and uncollateralized certificates of deposit.

Section 1. Definitions. (1) ~~["Commission" means the State Investment Commission.~~

(2) ~~"Office" means the Office of Financial Management and Economic Analysis.~~

(3) ~~"Bankers' acceptance" means a short-term negotiable discount note drawn on and accepted by a bank or trust company which is obligated to pay the face value amount at maturity, which is rated in one (1) of the three (3) highest categories by a nationally recognized rating agency].~~

(2) ~~(4) "Commercial paper" means an unsecured promissory obligation having a maturity of less than 270 days [and is originated by an institution that is rated in the highest category by a nationally recognized rating agency].~~

(3) ~~"Commission" means the State Investment Commission.~~

(4) ~~"NRSO" means "Nationally Recognized Statistical Ratings Organization", which is a credit rating agency that is registered with the Securities and Exchange Commission, and which provides its opinion on the creditworthiness of an entity and the financial obligations issued by that entity.~~

(5) ~~"Office" means the Office of Financial Management.~~

Section 2. Bankers' Acceptances. (1) The office may purchase bankers' acceptances ~~if [originated by a bank] rated in the [one (1) of the three (3)] highest short-term rating category [categories] by an NRSRO [a nationally recognized rating agency].~~

(2) The purchase of these instruments shall be:

(a) Made on a delivery versus payment ~~[versus delivery]~~ basis; and

(b) Held in the Commonwealth's account in whatever depository shall be designated as eligible by the commission.

(3)(a) Investment in bankers' acceptances shall be made for a period of no longer than 180 days ~~[six (6) months]~~ per investment.

(b) The total amount of the investment in this security shall not exceed the amount of twenty-five (25) ~~[ten (10)]~~ million dollars in one (1) institution at a time.

Section 3. Commercial Paper. (1) The office may purchase commercial paper ~~[if originated by an issuer that is] rated in the highest short-term rating category by an NRSRO [a nationally recognized rating agency].~~

(2) The purchase of these instruments shall be:

(a) Made on a delivery versus payment ~~[versus delivery]~~ basis; and

(b) Held in the Commonwealth's account in whatever depository shall be designated as eligible by the commission.

(3) The investments in commercial paper shall be made for a period of no longer than 270 days ~~[nine (9) months]~~ per investment and the total amount of the investment in this security shall not exceed the amount of twenty-five (25) million dollars by any issuer at a time.

Section 4. Negotiable Certificates of Deposit, Collateralized and Uncollateralized. (1) The office may purchase collateralized ~~[and uncollateralized negotiable]~~ certificates of deposit if issued by banks rated in one (1) of the three (3) highest categories by an

NRSRO [a nationally recognized rating agency].

(2) The office may purchase uncollateralized negotiable certificates of deposit if issued by banks rated in one (1) of the two (2) highest categories by an NRSRO or subject to 200 KAR 14:200.

(3) The purchase of these instruments shall be:

(a) Made on a delivery versus payment ~~[versus delivery]~~ basis; and

(b) Held in the Commonwealth's account in whatever depository shall be designated as eligible by the commission.

(4) ~~(3)~~ (a) Investment in negotiable certificates of deposits shall be made for a period of no longer than 270 days ~~[nine (9) months]~~ per investment unless specifically authorized by KRS 41.610.

(b) The total amount of investments in certificates of deposit shall not exceed the amount of twenty-five (25) ~~[ten (10)]~~ million dollars in any one (1) institution at a time.

Section 5. Limit of Money Market Instruments of the State's Total Portfolio. The aggregate investment in bankers' acceptances, commercial paper, and negotiable certificates of deposit shall not exceed thirty-five (35) ~~[twenty (20)]~~ percent of the Commonwealth's total investment portfolio.

F. THOMAS HOWARD, Executive Director

APPROVED BY AGENCY: September 12, 2012

FILED WITH LRC: September 12, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2012, from 10:00 a.m. to 12:00 p.m., in Room 383, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this 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 October 31, 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: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DeVon Hankins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides the direction for investment of state funds required by KRS 42.500 (10).

(b) The necessity of this administrative regulation: This regulation is required to place limitations on investment activities in order to limit the risk of loss of state funds through imprudent investment decisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 42.500 (10) specifies particular requirements for this administrative regulation such as limits on the maturity of investments. This regulation specifies those particular limitations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on the investment of state funds and requires prudent investment activities which will limit the exposure of state funds to investment losses.

(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 consistency of exposure limits across various asset types while restricting the eligible in-

vestments to more credit worthy issuers, establishes maturity limitations that conform to Securities and Exchange Commission Rule 2a-7, and conforms terminology with current market standards.

(b) The necessity of the amendment to this administrative regulation: This amendment brings the regulation up to the standards adopted by the State Investment Commission.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is compliant with KRS 42.500 (10).

(d) How the amendment will assist in the effective administration of the statutes: The amendment further clarifies investment activities to reduce the risk of loss of state funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation only affects actions by the Office of Financial Management.

(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: Personnel in OFM will need to assure investment purchases meet the newly modified requirements set forth in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment clarifies certain requirements for the Office of Financial Management and brings regulation into conformity with Securities and Exchange Commission Rule 2a-7.

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

(a) Initially: 0\$

(b) On a continuing basis: 0\$

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None needed

(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 needed.

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

(9) TIERING: Is tiering applied? There is no tiering because it is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation only affects the investment actions of the Office of Financial Management

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 42.500 requires the State Investment Commission to promulgate this regulation. Additionally, the regulation requires that the Limited Term pool be managed consistent with SEC Rule 2a-7 as required by current government accounting standard.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first

year? No cost.

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

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 Barbering (Amendment)

#### 201 KAR 14:105. Barbering school enrollment and post-graduate requirements.

RELATES TO: KRS 317.410, 317.440

STATUTORY AUTHORITY: KRS 317.430(1), 317.440(1), 317.450(1)(a)3, (2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.430(1) requires the Kentucky Board of Barbering to regulate barber schools and the teaching of barbering. KRS 317.440(1) requires the Kentucky Board of Barbering to promulgate administrative regulations governing applicants for barbering licenses. KRS 317.450(1)(a)3 requires the Kentucky Board of Barbering to ensure that a license to practice barbering shall be issued only if an applicant has acted as a licensed apprentice to a barber for at least nine (9) months, and KRS 317.450(2)(c) requires the Kentucky Board of Barbering to ensure that a licensed apprentice to a barber has graduated high school or possesses a General Educational Development (GED) certificate. This administrative regulation establishes requirements for barbering school enrollment and postgraduate coursework.

Section 1. Enrollment Application. (1) Each student applicant shall complete and submit to the barbering school an Enrollment Application for Barber School.

(2) Each student applicant shall also submit to the barbering school:

(a) A copy of the applicant's high school:

1. Certificate;

2. Diploma; or

3. Transcript; or

(b) A copy of the applicant's General Educational Development (GED) certificate.

(3) A prospective student shall not attend a barber school until the student has complied with subsections (1) and (2) of this section and the board has notified the school, pursuant to subsection (4)(c)2a of this section, that the board is in receipt of the completed and correct enrollment form and documentation

(4)(a) The barbering school shall submit to the board the:

1. Student's enrollment application; and

2. Documentation required by subsection (2) of this section.

(b) The barbering school shall submit the material required by paragraph (a) of this subsection to the board by:

1. Scanning the application into an electronic format and emailing the application to the board;

2. Fax;

3. Post; or

4. Hand delivery.

(c)1. Upon the first business day that the board receives from the barbering school the material required by paragraph (a) of this subsection, the board shall print, if the submission was in electronic format, and shall date stamp the material.

2.a. Within two (2) business days of receiving the documentation from the barbering school, the board shall contact the barbering school by phone, fax, or email to alert the school that the student is enrolled and may begin attending.

b. The board shall follow up with an official letter, sent to the barbering school and the student applicant, which shall state the student's official enrollment eligibility date.

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

Section 2. Postgraduate Requirements. (1) A barbering school shall enroll a student who requests postgraduate coursework if the student has complied with:

- (a) Section 1 of this administrative regulation;
- (b) 201 KAR Chapter 14; and
- (c) KRS Chapter 317.

(2) A barbering school shall not approve postgraduate course credits for less than 150 hours, except in accordance with 201 KAR 14:015 if the applicant has failed the licensing examination twice consecutively.

Section 3. A person who is an owner or employee of a barber school shall not be enrolled in that barber school as a student.

Section 4. Incorporation~~[Material Incorporated]~~ by Reference.

(1) "Enrollment Application for Barber School", August 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30p.m.

HARTSEL H. STOVALL, Chair

APPROVED BY AGENCY: August 27, 2012

FILED WITH LRC: September 14, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 29, 2012 at 10:00 a.m. (EST) at 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5055. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 2012, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard shall 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 October 31, 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: Karen Greenwell, Administrator, Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5055, phone (502) 429-7148, and fax (502) 429-7149.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Greenwell, Administrator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions for barber school owners and employees with regard to their personal enrollment as a student in barber school.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform barber school owners and employees that they shall not be enrolled in that barber school as a student.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the conditions of operation for a barber school and to protect the public against misrepresentation, deceit or fraud in the practice or teaching of barbering as established by KRS 317.440.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the conditions of operation and enrollment for a barber school and protects the public against misrepresentation, deceit or fraud in the practice or teaching of barbering.

(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 provide conditions of enrollment to protect the public against misrepresentation, deceit or fraud in the practice or teaching of barbering establishing that a person who is

an owner or employees of a barber school shall not be enrolled in that barber school.

(b) The necessity of the amendment to this administrative regulation. This administrative regulation amendment is necessary to inform barber school owners and employees that they shall not be enrolled in that barber school as a student to protect the public against misrepresentation, deceit or fraud in the practice or teaching of barbering.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to promulgate administrative regulations governing the protection of the public against misrepresentation, deceit or fraud in the practice or teaching of barbering as established by KRS 317.440.

(d) How the amendment will assist in the effective administration of the statutes: By establishing the conditions for barber school owners and employees with regard to their personal enrollment as a student in barber school.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 9 licensed barber schools and approximately 12 school owners and approximately 25 barber school employees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Barber school owners or employees will not have to take any actions to comply with this administrative regulation amendment but they will not be able to enroll in that barber school as a student.

(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 barber school owners or employees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Barber school owners or employees will be informed that they shall not be enrolled in that barber school as a student.

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

(a) There will be no cost to implement this administrative regulation.

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

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it increase any fees either directly or indirectly.

(9) Tiering: Is tiering applied? Tiering was not used because all barber school owners and employees will be treated the same.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact licensed barber school owners or employees pursuant to KRS 317.410 and KRS 317.440.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Kentucky Board of Barbering authorizes the action taken by administrative regulation pursuant to KRS 317.410 and KRS 317.440.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? No new costs will be incurred by this administrative regulation amendment.

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred to administer this administrative regulation amendment for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Please note that the administrative regulation amendment to 210 KAR 14:105 will not create any new revenues for either the agency or State Government. Further, this amendment will not create any new expenditures for the agency, the licensees or State Government. This administrative regulation amendment simply establishes that a person who is a barber school owner or employee shall not be enrolled in that barber school as a student. There are no fee increases and no new fees established by the administrative regulation amendment to 201 KAR 14:105.

#### GENERAL GOVERNMENT CABINET

#### Kentucky Board of Speech-Language Pathology and Audiology (Amendment)

#### 201 KAR 17:090. Continuing education requirements.

RELATES TO: KRS 334A.170(4)

STATUTORY AUTHORITY: KRS 334A.080(3), 334A.170(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure. KRS 334A.170(4) requires the board to promulgate administrative regulations to set forth requirements concerning continuing professional education. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means:

(a) A speech-language pathology or audiology course, designated by a speech-language pathology or audiology title or content; or

(b) An academic course, relevant to speech-language pathology or audiology.

(2) "Approved" means recognized by the Kentucky Board of Speech-Language Pathology and Audiology.

(3) "Continuing education hour" means sixty (60) clock minutes of participating in continuing educational experiences.

(4) "Program" means an organized learning experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or a series.

(5) "Provider" means an organization approved by the Kentucky Board of Speech-Language Pathology and Audiology for providing a continuing education program.

(6) "Related" means having content that is not directly linked to the practice of speech-language pathology or audiology, but expands or augments clinical practice.

(7) "Relevant" means having content applicable to the practice of speech-language pathology or audiology.

Section 2. Accrual of Continuing Education Hours. (1) A minimum of thirty (30) continuing education hours shall be accrued by each person holding licensure as a speech-language pathologist, speech-language pathology assistant, or audiologist during the biennial period for renewal. Effective February 1, 2013, two (2) of these hours shall be focused on ethics.

(2) A person who holds a license in both speech-language pathology and audiology shall complete a minimum of fifty (50) continuing education hours during the biennial period for renewal. This person shall obtain continuing education hours in both areas of licensure. Effective February 1, 2013, two (2) of these hours shall be focused on ethics.

(3) All continuing education hours shall be in the field in which the person is licensed. The licensee may use up to a maximum of four (4) hours in a related area for each biennial period.

(4) A person newly licensed during the license renewal period shall not be required to complete continuing education as a prerequisite for the first renewal of his license.

(5) A person failing to renew the license within the five (5) year period after its expiration shall obtain a license only after meeting the initial licensure requirements of 201 KAR Chapter 17. In addition, the applicant shall provide proof of the successful completion of thirty (30) hours of continuing education within the last two (2) years for a speech-language pathology, speech-language pathology assistant, or audiology license or fifty (50) hours of continuing education for a license in both speech-language pathology and audiology.

(6) Continuing education shall be completed by January 31 of the renewal period.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of a speech-language pathologist, speech-language pathology assistant, or audiologist. (1) The hours shall be earned by completing any of the following educational activities:

(a) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of speech-language pathology or audiology and shall be approved without further review by the board if the program is:

1. Sponsored or approved by:

- a. The American Speech-Language-Hearing Association; or
- b. The American Academy of Audiology; or

2. An academic course offered by an accredited postsecondary institution directly related to speech-language pathology or audiology. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours. Programs designated to meet degree requirements shall not be acceptable;

(b) Programs requiring board review and approval. The board shall issue an approval number upon receipt of the documentation required by Section 4 of this administrative regulation. A program from any of the following sources shall be reviewed and determined if the program is relevant and therefore subsequently approved by the board:

1. A program, including a home study course or in-service training provided by another organization, educational institution, or service provider approved by the board in accordance with Section 5 of this administrative regulation;

2. A program or academic course presented by the licensee. A presenter of a relevant program or academic course shall earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; or

3. Authoring an article in a relevant, professionally recognized or juried publication. Credit shall not be granted for an article unless the article was published within the two (2) year period immediately preceding the renewal date and a licensee shall not earn more than one-half (1/2) of the continuing education hours required

for renewal. More than one (1) publication shall not be counted during a renewal period.

4. Online coursework shall not exceed ten (10) hours per day.

(2) A general education course, elective course, or a course designated to meet degree requirements shall not be acceptable.

(3) Related continuing education subjects which are not specifically a part of the field of speech-language pathology or audiology may be approved for up to four (4) continuing education hours if the board believes that the related areas serve to enhance the licensee's ability to practice. The four (4) hour maximum credit for related areas of study by the licensee shall be applicable to only one (1) license (speech-language pathology or audiology) for those individuals who hold dual licensure.

Section 4. Procedures for Approval of Continuing Education Programs. A course, which has not been preapproved by the board, may be used for continuing education if approval is secured from the board for the course. The board may consider for approval a Continuing Education program if one (1) or more of the following items have been submitted. In order for the board to adequately review a program, the following information shall be submitted:

- (1) A published course or seminar description;
- (2) Names and qualifications of the instructors;
- (3) A copy of the program agenda indicating hours of education, coffee and lunch breaks;
- (4) Number of continuing education hours requested;
- (5) Application to the board for continuing education credits approval.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. An entity seeking to obtain approval:

(a) Of a continuing education program prior to its offering shall apply to the board at least thirty (30) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation; or

(b) As a prior-authorized continuing education provider under Section 3(1)(a) of this administrative regulation shall satisfy the board that the entity seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in subsection (2) of this section; and
2. Does not exclude a licensee from its programs.

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

- (a) Is an organized program of learning;
- (b) Pertains to subject matters which integrally relate to the practice of speech-language pathology or audiology;
- (c) Contributes to the professional competency of the licensee; and
- (d) Is conducted by individuals who have relevant educational training or experience.

(3) Providers of continuing education shall provide attendees with a certificate of completion including the course approval number provided by the board.

Section 6. Responsibilities and Reporting Requirements of a Licensee. (1) During the licensure renewal period, up to fifteen (15) percent of all licensees shall be selected at random by the board and required to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board;

(2) A licensee shall:

- (a) Be responsible for obtaining required continuing education hours;
- (b) Identify his own continuing education needs and seek activities that meet those needs;
- (c) Seek ways to integrate new knowledge, skills and attitudes;
- (d) Select approved activities by which to earn continuing education hours;
- (e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as required in Section 3(1) of this administrative regulation;
- (f) At the time of renewal, list the continuing education hours

obtained during that licensure renewal period;

(g) Document attendance, participation in, and successful completion of continuing education activity for a period of two (2) years from the date of the renewal; and

(h) Maintain records of continuing education hours.

(3) If audited, the following items are required to document continuing education activity:

(a) A transcript or tracking sheet issued by a professional association; or

(b) A transcript, official certificate of completion, or affidavit signed by the instructor;

(4) Failure to comply with the provisions of this administrative regulation shall constitute a violation of KRS 334A.170(4) and shall result in:

(a) Refusal to renew licensure;

(b) Suspension of licensure; or

(c) Revocation of licensure;

(5) Documentation sent to the board prior to renewal shall be returned to the licensee by regular mail.

Section 7. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) A provider of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 5(2) of this administrative regulation, directly to the licensee.

(2) A sponsor of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board. The board shall provide an identifying number for the sponsor to use in identifying the course.

Section 8. Board to Approve Continuing Education Hours; Appeal of Denial. (1) If an application for approval of continuing education hours is denied, in whole or part, the licensee shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and

(c) Conducted in accordance with KRS Chapter 13B.

Section 9. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member; or

(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the person holding licensure; and

(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

Section 10. Continuing Education Requirements for a Person on Inactive Status or Holding Interim Licensure. (1) The continuing education requirements established in Section 2 of this administrative regulation shall be waived for a licensee on inactive status during the time period the licensee remains inactive. A person on inactive status who requests reactivation shall meet the requirements of Section 11 of this administrative regulation.

(2) The continuing education requirements established in Section 2 of this administrative regulation shall not apply to a person holding interim licensure.

(3) Notwithstanding subsection (1) of this section, a licensee on inactive status shall submit proof of thirty (30) hours of continuing education when applying for a third consecutive biennial renewal under inactive status. For subsequent renewals, an inactive licensee shall obtain thirty (30) hours of continuing education for every six (6) years on inactive status. Effective February 1, 2013,

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

these hours shall be obtained no more than two (2) years prior to the six (6) year deadline. Effective February 1, 2013, two (2) of these hours shall be focused on ethics.

Section 11. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit evidence of thirty (30) hours of continuing education within the twenty-four (24) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) If the person seeking reinstatement or reactivation does not meet the requirement established in subsection (1) of this section, the board shall reinstate or reactivate licensure, and the person shall obtain thirty (30) hours of continuing education within twelve (12) months of the date on which licensure is reinstated.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

ANNE OLSON, Board Chair

APPROVED BY AGENCY: September 11, 2012

FILED WITH LRC: September 12, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2012 at 10:00 a.m. (EST) at 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2012 at 11:59 pm ET. 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: Marcia Egbert, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes continuing education requirements for speech language pathologists, audiologists, and speech-language pathology assistants.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 334A.170(4).

(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 generally.

(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 continuing education requirements for speech-language pathologists, audiologist, and speech-language pathology assistants.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes an ethics component to continuing education.

(b) The necessity of the amendment to this administrative regulation: The amendment establishes an ethics component to continuing education.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is

in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally regarding licensure requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board by making licensees more aware of their ethical duties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2300 individuals are licensed by the Board. The vast majority, 1985, are speech-language pathologists.

(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 individuals identified in question (3) will be impacted only to the extent that they may need to identify and complete different continuing education courses prospectively.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have great knowledge of their ethical duties.

(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 licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish any new fees. Nor does it increase any existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 334A.080(3).

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

(a) 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

(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  
Board of Physical Therapy  
(Amendment)**

**201 KAR 22:001. Definitions for 201 KAR Chapter 22.**

RELATES TO: KRS 327.010

STATUTORY AUTHORITY: KRS 327.040(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) requires the Kentucky Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327 pertaining to the practice and credentialing of physical therapists and physical therapist assistants. This administrative regulation sets forth the definitions for 201 KAR Chapter 22.

Section 1. Definitions. (1) "Board" is defined by KRS 327.010(3).

(2) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(3) "Credential" means the license or certificate issued by the board authorizing a person to practice physical therapy.

(4) "Credential holder" means a licensed physical therapist or certified physical therapist assistant who has met all requirements for credentialing in 201 KAR 22:020 and has been credentialed by the board.

(5) "Credentialing" means the process of licensing or certifying an applicant by the board.

(6) "Direct supervision" means:

(a) The physical therapist or physical therapist assistant shall:

1. Be immediately available to direct and supervise tasks that are related to direct patient care; and

2. Provide line of sight direction and supervision the majority of the time per visit for each patient when these tasks are performed; and

(b) Supervision is not provided by telecommunications.

(7) "Endorsement" means a method of application which is utilized by an applicant credentialed by another jurisdiction.

(8) [(7)] "Examination" means a board-approved examination that an applicant shall successfully pass as a requirement for credentialing.

(9) [(8)] "Full time" means employment for forty (40) hours a week.

(10) [(9)] "Inactive status" means a credential that is inactive and the credential holder is not engaged [shall not engage] in the practice of physical therapy.

(11) [(10)] "Jurisdiction" means a licensing authority in a state or territory of the U.S.

(12) [(11)] "NPTE" means the National Physical Therapy Examination for physical therapists and physical therapist assistants.

(13) [(12)] "On-site supervision" means immediate physical accessibility within the same building.

(14) "Patient" means any person for whom physical therapy, as defined in KRS 327.010(1), is provided.

(15) [(13)] "Physical therapist assistant" means a skilled health care worker certified by the board who performs physical therapy and related duties as assigned by the supervising physical therapist.

(16) "Physical therapist student" or "physical therapist assistant student" means a person who meets the requirements of KRS 327.050(10)(a).

(17) "Physical therapy student services" means services provided by a physical therapist student or physical therapist assistant student, as part of the student's educational program, and are considered provided by the supervising physical therapist or physical therapist assistant.

(18) [(14)] "Reinstatement of a credential" means a renewal of a license that has lapsed.

(19) [(15)] "Supervising physical therapist" means the physical

therapist who is supervising the care of a patient who is being treated by a physical therapist assistant or supportive personnel.

(20) [(16)] "Supportive personnel" means a person assisting in the provision of direct physical therapy patient care who is not credentialed by the board and is not a physical therapist student or physical therapist assistant student.

(21) [(17)] "Verification" means the process of verifying a lawful credential.

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 14, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2012, at 6:00 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 October 31, 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: Scott D. Majors, Executive Director,  
Board of Physical Therapy, 312 Whittington Parkway, Suite 102,  
Louisville, Kentucky 40222, phone (502) 429-7140, and fax (502) 429-7142.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Scott D. Majors, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the definitions for 201 KAR Chapter 22.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to define terms used in 201 KAR Chapter 22.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the definitions to promulgate administrative regulations as required by KRS 327.040.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It defines terms used for 201 KAR Chapter 22.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds the definition of "Direct Supervision" and "Patient".

(b) The necessity of the amendment to this administrative regulation: To differentiate between onsite supervision and direct supervision.

(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 including the use of supportive personnel.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the supervision of certified physical therapist assistants and supportive personnel.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4,800 physical therapists and physical therapist assistants, hospitals, physical therapy clinics and other entities that provide physical therapy services.

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

(a) List the actions that each of the regulated entities identified



in question (3) will have to take to comply with this administrative regulation or amendment: The entities in (3) will be required to provide direct supervision of supportive personnel as that term is defined in the amended administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be minimal cost to the entities in questions (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Protect the health and welfare of the public.

(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. Not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Physical therapists and physical therapists assistants credentialed by the Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 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 stan-

dards 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) Ensure that all personnel involved in the delivery of physical therapy services are identified to the patient by name and title;

(d) 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

(e) 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) of this administrative regulation; or

(b) Ensure the evaluation and plan of care from the other physical therapy service are current and appropriate;

(c) Retain the evaluation and plan of care from the other physical therapy service in the medical record;

(d) Document the patient transfer of care in the medical record; and

(e) 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 ac-

cepted 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; and

(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, all members of a business entity shall 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 ~~[-:]~~ 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 a cumulative of seven (7) ~~[consecutive]~~ work days in a sixty (60) ~~consecutive day period~~ shall not constitute a violation of this standard;

(2) Provide direct supervision when supervising supportive personnel as defined by 201 KAR 22:001, Section 1(6), effective September 1, 2013;

(3) Not delegate procedures or techniques to the physical therapist assistant ~~that are~~[or supportive personnel if it is] outside his or her scope of training, education or expertise;

(4) Not delegate procedures or techniques to supportive personnel that are outside his or her scope of training, education or expertise.

(a) Scope of training and competency for supportive personnel shall be documented and verified at least annually.

(b) Documentation of training and competency shall be immediately available for review;

~~(5) [-]~~

~~(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 assis-~~

tant 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) Ensuring that if supportive personnel provide direct patient care that there is direct supervision as defined by 201 KAR 22:001, Section 1(6), effective September 1, 2013~~[on-site supervision]~~ by a physical therapist or physical therapist assistant;

(g) Ensuring that a physical therapy student fulfilling clinical education requirements shall receive on-site supervision by a physical therapist;

(h) Ensuring 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; and

(i) Establishing discharge planning for patients who require continued physical therapy.

(6) The physical therapist shall direct and be responsible for services rendered by physical therapist students or physical therapist assistant students, including documentation requirements in Section 5 of this administrative regulation.

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 or supervising the physical therapist student 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:

(a) Be written or typed, signed or dated:

1. By the person rendering treatment; or

2. By the student or by the supervising physical therapist or physical therapist assistant if treatment was rendered by a physical therapist or physical therapist assistant student;

(b) Be countersigned and dated by the physical therapist if written by supportive personnel, students, or physical therapy examination candidates; and

(c) Include, 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:

1. ~~(a)~~ A current record of treatment;

2. ~~(b)~~ Patient's adverse response to treatment;

3. ~~(c)~~ Any factors affecting treatment; and

4. ~~(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) of this administrative regulation:

(a) If a~~[the]~~ physical therapist or physical therapist student is treating the patient, these reports may be incorporated into the progress notes.

(b) If a physical therapist assistant, physical therapist assistant student, 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, or physical therapist student, 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, physical therapist student, or physical therapist assistant student may write the discharge sum-

mary, which shall be ~~signed~~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~~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".

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 14, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2012, at 6:00 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 October 31, 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, and fax (502) 429-7142.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors, 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 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 delivery of physical therapy services to help ensure the safety and health of the public.

(b) The necessity of the amendment to this administrative regulation: To clarify the supervision of supportive personnel.

(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 including the use of supportive personnel.

(c) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements for the supervision and use of supportive personnel.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4,800 physical therapists and physical therapist assistants, hospitals, physical therapy clinics and other entities that provide physical therapy services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities in (3) will be required to provide direct supervision of supportive personnel as that term is defined in the amended administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be minimal cost to the entities in questions (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Protect the health and welfare of the public.

(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. Not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Physical therapists and physical therapists assistants credentialed by the Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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:

VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

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

301 KAR 1:015. Boat[Boats] and motor restrictions.

RELATES TO: KRS 150.010, 235.010(4), 150.090, 150.625, 150.990, 235.990

STATUTORY AUTHORITY: KRS 150.620, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it has acquired. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state. This administrative regulation limits[is necessary to limit] the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. (1) A person shall not operate on the lakes listed in subsection (2) of this section:

(a) A house boat;  
(b) A monohull boat with a center line length exceeding twenty-two (22) feet; or

(c) A pontoon boat with a float or decking exceeding twenty-two (22) feet, except for the following lakes where a pontoon boat with a float or decking up to thirty (30) feet may be operated:

1. Cedar Creek Lake, Lincoln County;
2. Lake Beshear, Caldwell County; and
3. Lake Malone, Muhlenburg and Logan County.

(2) List of lakes:

- (a)[1-] Arrowhead Slough, Ballard County;
- (b)[2-] Beaver Creek Lake, Anderson County;
- (c)[3-] Beaver Dam Slough, Ballard County;
- (d)[4-] Bert Combs Lake, Clay County;
- (e)[5-] Big Turner Lake, Ballard County;
- (f)[6-] Boltz Lake, Grant County;
- (g)[7-] Briggs Lake, Logan County;
- (h)[8-] Bullock Pen Lake, Grant County;
- (i)[9-] Burnt Pond, Ballard County;
- (j)[10-] Burnt Slough, Ballard County;
- (k)[11-] Butler Lake, Ballard County;
- (l)[12-] Carnico Lake, Nicholas County;
- (m)[13-] Carpenter Lake, Daviess County;
- (n)[14-] Carter Caves Lake, Carter County;
- (o)[15-] Cedar Creek Lake, Lincoln County;
- (p)[16-] Corinth Lake, Grant County;
- (q)[17-] Cross Slough, Ballard County;
- (r)[18-] Cypress Slough, Ballard County;
- (s)[19-] Deep Slough, Ballard County;
- (t)[20-] Dennie Gooch Lake, Pulaski County;
- (u)[21-] Elmer Davis Lake, Owen County;
- (v)[22-] Fishpond Lake, Letcher County;
- (w)[23-] Goose Lake, Muhlenburg County;
- (x)[24-] Greenbo Lake, Greenup County;
- (y)[25-] Guist Creek Lake, Shelby County;
- (z)[26-] Happy Hollow Lake, Ballard County;
- (aa)[27-] Island Lake, Ohio County;
- (bb)[28-] Kincaid Lake, Pendleton County;
- (cc)[29-] Kingdom Come Lake, Harlan County;
- (dd)[30-] Kingfisher Lakes, Daviess County;
- (ee)[31-] Lake Beshear, Caldwell County;
- (f)[32-] Lake Chumley, Lincoln County;
- (gg)[33-] Lake Malone, Muhlenburg County;
- (hh)[34-] Lake Mauzy, Union County;
- (ii)[35-] Lake Reba, Madison County;
- (jj)[36-] Lake Washburn, Ohio County;
- (kk)[37-] Lebanon City Lake, Marion County;
- (ll)[38-] Lincoln Homestead Lake, Washington County;
- (mm)[39-] Little Green Sea, Ballard County;
- (nn)[40-] Little Turner Lake, Ballard County;
- (oo)[41-] Long Pond, Ballard County;
- (pp)[42-] Marion County Lake, Marion County;
- (qq)[43-] Martin County Lake, Martin County;
- (rr)[44-] McNeely Lake, Jefferson County;

- (ss)[45-] Metcalfe County Lake, Metcalfe County;
- (tt)[46-] Mill Creek Lake, Wolfe County;
- (uu)[47-] Mitchell Lake, Ballard County;
- (vv)[48-] Pan Bowl Lake, Breathitt County;
- (ww)[49-] Pikeville City Lake, Pike County;
- (xx)[50-] Sandy Slough, Ballard County;
- (yy)[51-] Shanty Hollow Lake, Warren County;
- (zz)[52-] Shelby Lake, Ballard County;
- (aaa)[53-] South Lake, Ohio County;
- (bbb)[54-] Spurlington Lake, Taylor County;
- (ccc)[55-] Swan Lake, Ballard County;
- (ddd)[56-] Twin Pockets Slough, Ballard County;
- (eee)[57-] Wilgreen Lake, Madison County.

(3) Length restrictions in this section shall not apply to a canoe.

(4) A person shall not operate a personal watercraft as defined in KRS 235.010(4) on Cedar Creek Lake.

Section 2. (1) A person shall not operate:

(a)[(1)] A boat motor without an underwater exhaust; or

(b)[(2)] A boat faster than idle speed when passing a boat with an occupant actively engaged in fishing, except in a designated skiing zone.

(2)[];

(3)[] The requirements in subsection[subsections] (1)[and (2)] of this section shall apply on:

- (a) Beaver Lake, Anderson County;
- (b) Boltz Lake, Grant County;
- (c) Bullock Pen Lake, Grant County;
- (d) Carnico Lake, Nicholas County;
- (e) Cedar Creek Lake, Lincoln County;
- (f) Corinth Lake, Grant County;
- (g) Elmer Davis Lake, Owen County;
- (h) Greenbo Lake, Owen County;
- (i) Guist Creek Lake, Shelby County;
- (j) Kincaid Lake, Pendleton County;
- (k) Lake Beshear, Caldwell County;
- (l) Lake Malone, Muhlenburg County;
- (m) Pan Bowl Lake, Breathitt County;
- (n) Shanty Hollow Lake, Warren County;
- (o) Swan Lake, Ballard County; and[];
- (p) Wilgreen Lake, Madison County.

Section 3. A person shall not operate an electric or an internal combustion boat motor on:

- (1) Dennie Gooch Lake, Pulaski County;
- (2) Kingdom Come Lake, Harlan County; and
- (3) Lake Chumley, Lincoln County.

Section 4. A person shall not operate an internal combustion boat motor and shall only be allowed to use an electric trolling motor on:

- (1) Arrowhead Slough, Ballard County[and];
- (2) Beaver Dam Slough, Ballard County;
- (3) Bert Combs Lake, Clay County;
- (4) Big Turner Lake, Ballard County;
- (5) Briggs Lake, Logan County;
- (6) Burnt Pond, Ballard County;
- (7) Burnt Slough, Ballard County;
- (8) Butler, Ballard County;
- (9) Carpenter Lake, Daviess County;
- (10) Carter Caves Lake, Carter County;
- (11) Cross Slough, Ballard County;
- (12) Cypress Slough, Ballard County;
- (13) Deep Slough, Ballard County;
- (14) Fishpond Lake, Letcher County;
- (15)[Goose Lake, Muhlenburg County;
- (16)] Happy Hollow Lake, Ballard County;
- (17)[(17)] Island Lake, Ohio County;
- (18)] Kingfisher Lake, Daviess County;
- (19)[(19)] Lake Mauzy, Union County;
- (20)[(20)] Lake Reba, Madison County;
- (21)[(21)] Lake Washburn, Ohio County;
- (22)] Lebanon City Lake, Marion County;
- (23)] Lincoln Homestead Lake, Washington County;

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

- ~~(22)~~~~(24)~~ Little Green Sea, Ballard County;
- ~~(23)~~~~(25)~~ Little Turner Lake, Ballard County;
- ~~(24)~~~~(26)~~ Long Pond, Ballard County;
- ~~(25)~~~~(27)~~ Marion County Lake, Marion County;
- ~~(26)~~~~(28)~~ Martin County Lake, Martin County;
- ~~(27)~~~~(29)~~ McNeely Lake, Jefferson County;
- ~~(28)~~~~(30)~~ Metcalfe County Lake, Metcalfe County;
- ~~(29)~~~~(31)~~ Mill Creek Lake, Wolfe County;
- ~~(30)~~~~(32)~~ Mitchell Lake, Ballard County;
- ~~(31)~~~~(33)~~ Pikeville City Lake, Pike County;
- ~~(32)~~~~(34)~~ Sandy Slough, Ballard County;
- ~~(33)~~~~(35)~~ Shelby Lake, Ballard County;
- ~~(34)~~~~(36)~~ South Lake, Ohio County;
- ~~(37)~~ Spurlington Lake, Taylor County; and
- ~~(35)~~~~(38)~~ Twin Pockets Slough, Ballard County.

Section 5. On the following lakes, a person shall not operate a boat motor larger than ten (10) horsepower:

- (1) Beaver Lake, Anderson County;
- (2) Boltz Lake, Grant County;
- (3) Bullock Pen Lake, Grant County;
- (4) Corinth Lake, Grant County;
- (5) Elmer Davis Lake, Owen County;
- (6) Kincaid Lake, Pendleton County;
- (7) Shanty Hollow Lake, Warren County; and
- (8) Swan Lake, Ballard County.

Section 6. A person shall not operate a motorboat faster than idle speed on:

- (1) Carnico Lake, Nicholas County;
- (2) Goose Lake, Muhlenberg County;
- (3) Greenbo Lake, Greenup County;
- (4) Island Lake, Ohio County;
- (5) South Lake, Ohio County;
- (6)~~(3)~~ Pan Bowl Lake, Breathitt County; and
- (7)~~(4)~~ Wilgreen Lake, Madison County.

Section 7. A person operating a boat motor larger than ten (10) horsepower shall not exceed idle speed at any time on the following lakes:

- (1) Herb Smith/Cranks Creek Lake; and
- (2) Martins Fork Lake.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: September 10, 2012

FILED WITH LRC: September 11, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012, at 1 p.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 October 31, 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](mailto: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 controls the size of boats and motors that can be used on small lakes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the safety of individuals boating on these small lakes and to minimize interference with other users.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it has acquired. KRS 235.280 authorizes the Department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of all waters of the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation helps fulfill the purpose of KRS 150.620 and 235.280 by providing fair, reasonable, equitable, and safe use of small lakes in the state.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows boats with gas driven motors to operate at idle speed only on Goose, Island, and South Lakes located at Peabody WMA. Previously, only electric motors were allowed to be used on boats operating on these lakes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because each of the three lakes are too long for battery-driven, electric motors to be suitable to enable boaters to access all areas.

(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 own boats having gasoline driven motors will no longer be restricted to trolling motors only.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions will be required of people listed in question (3).

(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 individuals as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All individuals who own boats having gasoline motors will no longer be restricted to using only their electric trolling motors; they will be able to use their gasoline motors at idle speed only on Goose, Island, and South lakes.

(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 initially to implement this administrative 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 fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees will be directly or indirectly increased.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it has acquired. KRS 235.280 authorizes the Department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of all waters of the state.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue will not be generated by this administrative regulation for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue will not be generated by this administrative regulation during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

**301 KAR 1:146. Commercial fishing gear.**

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990[,-EO 2008-546]

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. This administrative regulation establishes the legal methods that may be used by commercial fishermen to harvest rough fish.

Section 1. Definitions. (1) "Bar mesh size" means the distance between two (2) knots on a line of a net.

(2) "Commercial gear tag" means a metal tag provided by the department that is attached to legal commercial fishing gear as established in this administrative regulation.

(3) "Flag net" means a gill or trammel net that is anchored on one (1) end, with the other end of the net unanchored, allowing this end of the gill or trammel net to float freely.

Section 2. Gear Requirements. (1) The gear listed in subsections (2) through (16) of this section shall be the only legal commercial fishing gear allowed in commercial fishing waters established in 301 KAR 1:150 and under the conditions established in 301 KAR 1:155 by a licensed commercial fisherman.

(2) A hoop net, wing net, straight net, or heart lead net shall have a minimum bar mesh size of three (3) inches, except that the minimum mesh size shall be one (1) inch in the following waters:

(a) The Ohio River;

(b) The Mississippi River; and

(c) Those portions of the following waters open to commercial fishing pursuant to 301 KAR 1:150:

1. The Cumberland River below Barkley Dam; and

2. The Tennessee River below Kentucky Dam.

(3) A hoop may be made of any:

(a) Size;

(b) Shape; or

(c) Material.

(4) Wings and leads shall be constructed of the following material:

(a) Natural multifilament; or

(b) Synthetic.

(5) Netting used for wings and leads shall:

(a) Be constructed of twine no smaller than number six (6) nylon or the equivalent;

(b) Have a breaking strength of fifty-five (55) pounds or greater; and

(c) Have a bar mesh size no larger than one (1) inch.

(6) Wings and leads may consist of either:

(a) Knotted construction; or

(b) Knotless construction.

(7) The maximum length of each hoop net wing or lead shall be sixty (60) feet.

(8) The following nets shall be fished as individual nets:

(a) Hoop nets;

(b) Wing nets;

(c) Straight lead nets; or

(d) Heart lead nets.

(9) Wings or leads shall:

(a) Not be tied together to become a continuous multiple net unit; and

(b) Be used only to lead fish into a hoop net.

(10) One (1) commercial gear tag shall be attached to the first hoop of each net.

(11) A gill or trammel net:

(a) May be fished:

1. Weighted; or

2. As a flag net; and

(b) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.

(12) A gill or trammel net shall only be used in an overflow lake adjacent to the Ohio or Mississippi River only if the lake can be accessed from the river by a boat during high flow conditions, except as prohibited:

(a) On department Wildlife Management Areas pursuant to 301 KAR 4:020 and 4:050; or

(b) Pursuant to the requirements of 301 KAR 1:140.

(13) The bar mesh size on gill or trammel nets shall be:

(a) At least three (3) inches in:

1. The Mississippi River; and

2. Overflow lakes adjacent to the Mississippi River;

(b) At least four (4) inches from November 1 through April 30 in:

1. The Ohio River; and

2. Overflow lakes adjacent to the Ohio River; and

(c) Between four (4) and four and one-half (4 1/2) inches from May 1 through October 31 in:

1. The Ohio River; and

2. Overflow lakes adjacent to the Ohio River.

(14) A commercial trotline shall:

(a) Have more than fifty (50) hooks placed no closer than eighteen (18) inches apart;

(b) Have one (1) commercial gear tag attached; and

(c) Not be longer than 6,000 feet.

(15) A seine:

(a) Shall have a maximum bar mesh size of one (1) inch;

(b) May have knotted netting if constructed of twine that is:

1. No smaller than number six (6) nylon; or

2. An equivalent having a breaking strength of at least fifty-five (55) pounds;

(c) May have knotless netting if constructed of twine that is:

1. No smaller than number 147 nylon; or

2. An equivalent having a breaking strength of fifty (50) pounds



or greater:

(d) Shall be constructed of:

1. Natural multifilament; or

2. Synthetic material;

(e) Shall have both float and lead lines;

(f) Shall have the following attached at each end:

1. Wood poles;

2. Fiberglass poles; or

3. Brailes;

(g) Shall be attended by a person who pulls the seine by hand through the water to entrap fish; and

(h) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.

(16) A slat trap basket shall:

(a) Not have wire or other mesh added to any part of the trap;

(b) Have at least two (2) openings left between slats:

1. No smaller than one and one-fourth (1 1/4) inches wide in the catch portion of the trap; and

2. That shall not be restricted by cross-bracings to a length shorter than eight (8) inches;

(c) Not be larger than two (2) feet in diameter or square-end measure; and

(d) Have one (1) commercial gear tag attached to the opening ring or square. [150.025(1) authorizes the department to regulate, by administrative regulations, the size or type of devices and methods used to take wildlife, including rough fish and the places where they may be taken. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet. This administrative regulation is necessary to specify the legal methods that may be used by commercial fishermen to harvest rough fish.

Section 1. Definitions. (1) "Bar mesh size" is defined by 301 KAR 1:140, Section 1(1).

(2) "Commercial gear tag" means a metal tag, provided by the department, that shall be attached to legal commercial fishing gear as established in this administrative regulation.

(3) "Flag net" means a gill or trammel net that is anchored on one (1) end, while the other end of the net is unanchored, allowing this end of the gill or trammel net to float freely.

Section 2. The following gear is the only commercial gear that shall be used in commercial waters designated in 301 KAR 1:150 and under conditions described in 301 KAR 1:155 by appropriately licensed commercial fishermen:

(1) Hoop nets, wing nets, straight lead nets, or heart lead nets:

(a) A hoop net, wing net, straight net, or heart lead net shall have a minimum bar mesh size of three (3) inches, except in the Ohio River, the Mississippi River, and those portions of the Cumberland River below Barkley Dam and the Tennessee River below Kentucky Dam that are open to commercial fishing where the minimum bar mesh size shall be one (1) inch.

(b) Hoops may be any size, shape, or material.

(c) Maximum length of each lead or wing shall be sixty (60) feet.

(d) Wings and leads shall be constructed of multifilament natural or synthetic material only.

(e) Netting used for wings and leads shall be constructed of twine not smaller than number six (#6) nylon or equivalent, having a breaking strength of fifty-five (55) pounds or greater.

(f) Wings and leads may be of knotted or knotless construction and shall have a bar mesh size not larger than one (1) inch.

(g) Hoop nets, wing nets, straight lead nets, or heart lead nets shall be fished as individual nets.

(h) Wings or leads shall not be tied together so as to become continuous multiple net units.

(i) Wings and leads shall be used only to lead fish into the hoop net.

(j) One (1) commercial gear tag shall be attached to the first hoop of each net;

(2) Gill nets or trammel nets. A gill net or trammel net:

(a) May be used only in the Ohio and Mississippi Rivers and permanent overflow lakes adjacent to the Ohio and Mississippi Rivers that may be accessed from either river by a boat during high

flow conditions, except as prohibited on department Wildlife Management Areas in 301 KAR 4:050 and 301 KAR 4:020 or as specified in 301 KAR 1:140.

1. The minimum bar mesh size to be used in the Mississippi River and its adjacent permanent overflow lakes shall be three (3) inches.

2. The minimum bar mesh size to be used in the Ohio River and its adjacent permanent overflow lakes shall be four (4) inches, except that from May 1 through October 31, a commercial fisherman shall only use gill or trammel nets with a bar mesh size ranging from four (4) to four and five-tenths (4.5) inches;

(b) May be fished weighted or as a flag net; and

(c) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof;

(3) Commercial trotlines. A commercial trotline:

(a) Shall have more than fifty (50) hooks placed not closer than eighteen (18) inches apart;

(b) Shall have one (1) commercial gear tag attached; and

(c) Shall not be longer than 3,000 feet, including staging, and shall be fished separately, not tied together in a continuous line;

(4) Seines. A seine:

(a) Shall have:

1. A maximum bar mesh size of one (1) inch and may be of knotted or knotless construction; and

2. Knotted netting shall be constructed of twine not smaller than number 6 (#6) nylon or equivalent having a breaking strength of fifty-five (55) pounds or greater, and knotless netting shall be constructed of twine not smaller than #147 nylon or equivalent having a breaking strength of fifty (50) pounds or greater;

(b) Shall be constructed of multifilament natural or synthetic material only;

(c) Shall have both float and lead lines;

(d) Shall have wood, fiberglass, or metal poles or brailes attached at each end;

(e) Shall be attended by persons pulling the seine by hand through the water for the entrapment of fish; and

(f) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof; and

(5) Slat trap baskets. A slat trap basket:

(a) Shall not have wire or other mesh added to any part of trap;

(b) Shall have at least two (2) openings left between slats not smaller than one and one-fourth (1 1/4) inches wide in the catch portion of the trap. These openings shall not be restricted by cross-bracings to a length shorter than eight (8) inches;

(c) Shall not be larger than two (2) feet in diameter or square-end measure; and

(d) Shall have one (1) commercial gear tag attached to opening ring or square.]

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: September 10, 2012

FILED WITH LRC: September 11, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012, at 2 p.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 October 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109 ext. 4507, fax (502) 564-9136,

email [fwpubliccomments@ky.gov](mailto: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 specifies the legal methods that may be used by commercial fisherman to harvest rough fish.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to specify the types of legal gear that may be used by commercial fisherman to harvest rough fish from waters open to commercial fishing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. This administrative regulation establishes the legal methods that may be used by commercial fishermen to harvest rough fish. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by defining the size and types of gear that commercial fisherman can use to take rough fish.

(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 increase the maximum allowable length of a commercial trotline from 3,000 to 6,000 feet.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make it easier for commercial fishermen to find and retrieve their trotlines.

(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 amendment will affect only those commercial fishermen who use commercial trotlines to harvest rough fish. In the 2011-2012 commercial fishing season 100 out of 299 commercial fishermen reported harvesting rough fish with trotlines.

(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 will now be able to use trotlines up to 6,000 feet in length to harvest rough fish.

(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 individuals complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen will now be able to set one 6,000 foot trotline instead of setting 2 3,000 foot trotlines. This will make it easier for them to find and retrieve their trotlines.

(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 initially to implement this administrative 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 fees or funding.

(8) State whether or not this administrative regulation estab-

lished any fees or directly or indirectly increased any fees: No fees will be directly or indirectly increased.

(9) TIERING: Is tiering applied? Tiering was not applied because all commercial fishermen who use trotlines will be treated the same.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. This administrative regulation establishes the legal methods that may be used by commercial fishermen to harvest rough fish.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue will not be generated by this administrative regulation for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue will not be generated by this administrative regulation during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

### 301 KAR 1:155. Commercial fishing requirements.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990, 217.015(20)

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), 50 C.F.R. 17

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. ~~[set seasons, establish bag or creel limits, and to regulate the buying, selling, or transporting of fish and wildlife.]~~ KRS 150.175(3) authorizes the department to establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. Part 17 protects the shovelnose sturgeon from harvest because ~~of~~ following similarity of appearance with the endangered pallid sturgeon. This administrative regulation establishes commercial fishing requirements, protects certain species from overharvest, and regulates the buying and selling of roe-bearing species of rough fish.

Section 1. Definitions. (1) "Buyer's permit" means a Roe-bearing Fish Buyer's Permit.

(2) "Commercial fisherman" means a person holding a valid



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

resident or nonresident commercial fishing license.

(3) "Harvester~~[Harvester's]~~ permit" means a Roe-bearing Fish Harvester's Permit.

(4) "Immediate family member" means a person's spouse, mother, father, daughter, brother, sister, grandparent, or son.

(5) "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(6) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of~~or~~ roe.

(7) "Roe-bearing Fish Buyer's Permit" means a permit issued by the Department of Fish and Wildlife Resources that entitles the permittee to buy roe-bearing species or roe in accordance with this administrative regulation.

(8) "Roe-bearing Fish Harvester's Permit" means a permit issued by the Department of Fish and Wildlife Resources to a licensed commercial fisherman that entitles the permit holder~~[permittee]~~ to harvest and sell roe-bearing species in accordance with this administrative regulation.

(9) "Sport fish" means those species so designated by 301 KAR 1:060.

(10) "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.

(11) "Unprocessed roe" means roe that has been removed from a roe-bearing fish by a food-processing plant~~[- as defined by KRS 217.015(20).]~~ prior to its sale at a roe-bearing fish buyer's facility.

Section 2. Unlicensed Helpers. (1) A commercial fisherman shall not utilize more than two (2) unlicensed helpers while actively fishing.

(2) A commercial fisherman shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.

(3) An unlicensed helper shall:

(a) Be accompanied by a licensed commercial fisherman while using commercial fishing gear; and

(b) Be permitted to transport roe or roe-bearing fish in the absence of a commercial fisherman with a Fish Transportation Permit as established in 301 KAR 1:125.

(4) A commercial fisherman whose commercial fishing license has been suspended or revoked in Kentucky or in another state shall not:

(a) Be listed as a helper by a licensed Kentucky commercial fisherman; or

(b) Assist a licensed Kentucky commercial fisherman in harvesting or transporting fish.

Section 3. Tagging and Using Commercial Gear. A commercial fisherman shall:

(1) Tag commercial fishing gear pursuant to 301 KAR 1:146;

(2) Not use commercial fishing gear within:

(a) Fifty (50) yards of the outlet or inlet of an overflow lake; or

(b) Fifty (50) yards of the mouth of a stream except the mouth of the Ohio River; and

(c) 200 yards of a dam, as established in KRS 150.445~~[-]~~;

(3) Not use commercial nets from April 1 through October 31:

(a) In bays and inlets of Kentucky or Barkley Lakes; or

(b) Within a distance of 200 yards from the mouth of bays or inlets in Kentucky or Barkley Lakes; and

(4) Call the department at 800-858-1549 within twenty-four (24) hours if any commercial gear is:

(a) Lost;

(b) Stolen; or

(c) Unretrievable due to unforeseen circumstances.

Section 4. Roe-bearing Fish Harvester's Permit. (1) In order to retain his or her permit privilege, a Roe-bearing Fish Permit holder shall submit to the department the following by September 15:

(a) A completed Application for Roe-bearing Fish Harvester's Permit; and

(b) The permit fee as established in 301 KAR 3:022.

(2) A mailed application and fee shall be postmarked on or before September 15.

(3) Prior to being issued a harvester~~[harvester's]~~ permit, a person shall possess a valid commercial fishing license.

(4) A harvester permit shall not be sold to a resident of a state that will not sell a nonresident harvester~~[Roe-bearing Fish Harvester's Permit shall not be sold to a resident of a state that will not sell a nonresident harvester's]~~ permit, or its equivalent, to Kentucky residents.

(5) The maximum number of resident Roe-bearing Fish Harvester's Permits available each year shall be 101.

(6) The maximum number of nonresident Roe-bearing Permits available each year shall be eighteen (18).

(7) A harvester permit holder~~[Roe-bearing Fish Harvester permittee]~~ shall be eligible to transfer permit privileges to:

(a) An immediate family member; or

(b) An unlicensed helper who:

1. Has been employed by the permit holder~~[permittee]~~ for a period of at least one (1) year in that capacity; and

2. Complies with the requirements of this administrative regulation.

(8) To transfer a permit, the permit holder~~[harvester permittee]~~ shall send to the department:

(a) A notarized letter documenting the name and relationship of the permit recipient~~[transferee]~~; and

(b) If an unlicensed helper, proof of employment of the unlicensed helper for a period of one (1) year.

(9) Transferability shall be voided if a commercial fishing license or harvester permit is revoked or suspended as established in Section 12~~[harvester's permit is revoked or suspended as established in Section 13]~~ of this administrative regulation.

Section 5. Roe-bearing Fish Harvester Permit Lottery. (1) There shall be a lottery for the unfilled harvester permits below the quota.

(2) A person shall apply for the lottery by submitting the following to the department by September 15~~[-]~~:

(a) A completed Roe-bearing Fish Harvester Permit Application; and

(b) The appropriate permit fee as established in 301 KAR 3:022.

(3) A mailed application shall be postmarked by September 15 to be eligible.

(4) A person chosen in the lottery shall first obtain a commercial fishing license prior to obtaining a harvester permit~~[Harvester's Permit]~~.

(5) The department shall return all permit fees to those not chosen in the lottery.

(6) If the department receives fewer resident or nonresident harvester~~[harvester's]~~ permit applications than the number of available permits, then completed applications received after September 15 shall be filled in the order they were received until the quota has been reached.

(7) If the number of permit~~[Harvester Permit]~~ applications received on a day after September 15 exceeds the number of permits available, then a second lottery shall be held to determine the recipients of the available permits.

Section 6.~~[Roe-bearing]~~ Fish Harvester Permit Requirements. (1) A harvester~~[harvester's]~~ permit shall be required for a licensed commercial fisherman to harvest, transport, or sell roe fish or unprocessed roe.

(2) A permit shall not be required for a special commercial fishing permit holder~~[harvester's permit shall not be required for a special commercial fishing permittee]~~ to harvest and sell roe-bearing fish flesh or unprocessed roe from Kentucky and Barkley lakes during the special commercial fishing season, as established in 301 KAR 1:140.

(3) A harvester permit shall not be issued unless all applicable reports have been completed and submitted to the department, pursuant to Section 12 of this administrative regulation.~~[harvester's permit shall not be issued unless all monthly reports, as established in this Section and Section 12 of this administrative regulation, have been completed and submitted to the department.]~~

(4) A harvester permit holder~~[permittee]~~ shall:

(a) Have the~~[harvester's]~~ permit in possession while:

1. Fishing for roe-bearing fish; and

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

2. Transporting or selling roe-bearing fish or unprocessed roe;  
(b) Only sell, ship, barter, or provide harvested roe from roe-bearing fish to a Kentucky permitted buyer as established in Section 7 of this administrative regulation; and

(c) Possess a valid bill of lading if transporting unprocessed roe to a Kentucky permitted buyer;

(d) Properly report to the department by:

1. ~~Completing a Daily Roe-bearing Fish Harvester's Transaction Report for each day of the month that roe-bearing fish are harvested or are sold to a Kentucky permitted buyer;~~

2. ~~Submitting all daily reports that are completed within a calendar month to the department by the tenth day of the following month; and~~

3. ~~Completing and submitting to the department a monthly report as established in Section 12 of this administrative regulation].~~

Section 7. Buyer's Permit Requirements. (1) A buyer's permit shall be required to buy, sell, barter, receive, or ship unprocessed roe from roe-bearing fish harvested in Kentucky.

(2) A person shall apply for a buyer's permit by submitting a completed Application for Commercial Roe-bearing Fish Buyer's Permit along with the appropriate permit fee to the department, as established in 301 KAR 3:022.

(3) A ~~buyer's permit holder~~[~~buyer permittee~~] shall:

(a) Not knowingly purchase illegally taken fish or unprocessed roe from any state;

(b) Have in possession a valid buyer's permit while purchasing, receiving, or transporting unprocessed roe;

(c) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe fish harvesters in Kentucky;

(d) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe fish harvesters in another state including:

1. Name, address, and telephone number of the seller;

2. License number of the seller; and

3. Number of pounds of unprocessed roe purchased;

(e) ~~Submit a completed Monthly Commercial Roe-bearing Fish Buyer's Report to the department by the tenth day of the following month;~~

(f) ~~Sign the harvester permit holder's Daily Roe-bearing Fish Harvester's Transaction Report for each transaction prior to purchasing or receiving unprocessed roe from the harvester~~[~~Daily Roe-bearing Fish Harvester's Transaction Report for each transaction with a harvester permittee prior to purchasing or receiving unprocessed roe from the harvester permittee~~];

(g) ~~Retain a copy of the Daily Roe-bearing Fish Harvester's Transaction Report for each transaction with a harvester permit holder~~[~~permittee~~] for a period of three (3) years; and

(h) ~~Allow a conservation officer access to all records and reports, as established in this section, upon request, during normal business hours.~~

Section 8. Commercial Fishing Season and Size Limits. (1) The commercial fishing season shall be open year round in the waters listed in 301 KAR 1:150 except for:

(a) Kentucky and Barkley lakes as described in 301 KAR 1:140;

(b) The shovelnose sturgeon season, which shall extend from October 15 through May 15 in the Ohio River Basin only; and

(c) The paddlefish season which shall extend from:

1. November 1 through April 30 in all waters open to commercial fishing, except Barkley and Kentucky Lakes, as specified in 301 KAR 1:140; and

2. November 1 through May 31 for commercial trotlines in all waters open to commercial fishing, except the Ohio and Mississippi Rivers.

(2) There shall not be a size limit on any commercially-harvested rough fish, except that a commercial fisherman shall only harvest:

(a) Shovelnose sturgeon between twenty-four (24) and thirty-two (32) inches, as measured from the tip of snout to the fork of the tail fin; and

(b) Paddlefish that are thirty-two (32) inches or greater, as measured from the beginning of the eye to the fork of the tail fin, except for Kentucky and Barkley lakes as specified in 301 KAR 1:140.

(3) A harvester or buyer permit holder[permittee] shall not possess:

(a) Unprocessed Paddlefish roe after June 5; or

(b) Unprocessed Shovelnose sturgeon roe after May 20.

Section 9. Species Ineligible for Commercial Harvest. (1) A commercial fisherman shall not harvest, and shall immediately release the following species:

(a) Sport fish listed in 301 KAR 1:060;

(b) Pallid sturgeon, a federally-endangered species;

(c) Lake sturgeon;

(d) Shovelnose sturgeon caught in the Mississippi River; and

(e) All turtle species.

(2) A licensed commercial fisherman shall only sell roe-bearing fish or unprocessed roe from roe-bearing fish harvested by commercial fishing methods established in and permitted by 301 KAR 1:146.

Section 10. Tending Gear and Removing Fish. ~~[(1)]~~ A commercial fisherman shall:

~~(1) [(a)]~~ Tend and remove the fish from:

~~(a) Hoop~~~~[1- Baited Hoop]~~ nets or slat traps at least once every seventy-two (72) hours; and

~~(b) [2-]~~ Other commercial fishing gear at least once every twenty-four (24) hours;

~~(2) [(b)]~~ Not possess eggs of any species of fish outside of the fish's body cavity while on the water or adjacent bank; and

~~(3) [(c)]~~ Remove commercial fishing gear from the water when finished fishing.

Section 11. Roe Fish Egg Checking Methodology. A commercial fisherman shall use a ten (10) gauge or smaller needle to examine roe fish for the presence of eggs.

Section 12. Reporting, License and Permit Suspension, Renewal, and Revocation. (1) Every licensed commercial fisherman shall submit a completed Monthly Report of Commercial Fish Harvest in Kentucky by the tenth day of every month for the previous month's harvest even if no harvest occurred.

(2) A harvester permit holder shall:

(a) Complete a Daily Roe-bearing Fish Harvester's Report for each day of the month that roe-bearing fish are harvested or sold to a Kentucky permitted buyer; and

(b) Submit to the department all completed daily reports within a calendar month by the tenth day of the following month in addition to the reporting requirements established in subsection (1) of this section.

(3) If a buyer's permit holder completes any transactions in a given month, the permit holder shall submit to the department a completed Monthly Commercial Roe-bearing Fish Buyer's Report by the tenth day of the following month.

(4) A report that is being mailed to the department shall be postmarked on or before the tenth of the month pursuant to subsections (1) through (3) of this section.

(5) The department shall issue a courtesy reminder letter to a holder of a commercial fishing license, harvester permit, or buyer's permit who has failed to submit to the department a monthly report by the deadlines established in subsections (1) through (4) of this section.

(6) The department shall issue a warning letter to a license or permit holder who has twice failed to meet the reporting deadlines established in subsections (1) through (4) of this section during any given commercial fishing license year.

(7) The department shall suspend the commercial fishing license of a license or permit holder who has failed to meet reporting deadlines for three (3) or more months in a given license year until the license or permit holder submits to the department all required reports.

(8) The department shall suspend for a period of three (3) months the commercial fishing license of a license holder who has

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

not met the reporting deadlines established in this section for four (4) or more times in a license year.

(9) If a three (3) month suspension extends into a new license year, subsequent delinquent reports shall result in additional three (3) month suspensions.

(10) The department shall not renew a commercial fishing license, harvester permit, or buyer's permit for a person who has not satisfied the reporting requirements of this administrative regulation.

(11) The department shall revoke the commercial fishing license, for a period of two (2) years, of a person who has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear, pursuant to 301 KAR 1:146;

(b) Knowingly placing commercial fishing gear in a restricted area, pursuant to Section 3(2) and 3(3) of this administrative regulation;

(c) Harvesting prohibited species of fish;

(d) Commercially fishing in waters not open to commercial fishing, pursuant to 301 KAR 1:150; or

(e) Knowingly falsifying commercial harvest data.

(12) The department shall revoke a buyer's permit, for a period of two (2) years, of a person:

(a) Convicted of federal commercial fishing violation; or

(b) Who falsified data on a Monthly Commercial Roe-bearing Fish Buyer's Report.

(13) A person may request an administrative hearing pursuant to KRS Chapter 13B if a permit has been:

(a) Denied;

(b) Suspended;

(c) Not renewed; or

(d) Revoked. [Reporting. A commercial fisherman shall report to the department his or her monthly catch for all months licensed, including months the licensee did not fish, by the tenth day of the following month by completing a Monthly Report of Commercial Fish Harvest in Kentucky form provided by the department.

Section 13. License and Permit Suspension, Nonrenewal, and Revocation.

(1) The department shall suspend the commercial fishing license, harvester's permit, or buyer's permit, of a person who fails to complete and submit to the department any reports required by this administrative regulation by the following methods:

(a) The first time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive by mail a courtesy reminder letter.

(b) The second time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive a warning letter.

(c) The third and subsequent times during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the license or permit shall be suspended until all reports have been received.

(2) The department shall not renew the commercial fishing license or harvester's permit of a person who fails to complete and submit to the department all reports required by this administrative regulation.

(3) The department shall revoke the commercial fishing license or harvester's permit, for a period of two (2) years, of a person who has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear;

(b) Knowingly placing commercial fishing gear in a restricted area, as established in Section 3(2) of this administrative regulation;

(c) Harvesting of prohibited species of fish;

(d) Commercially fishing in waters not open to commercial fishing as established by 301 KAR 1:150; or

(e) Knowingly falsifying commercial harvest data.

(4) The department shall revoke the buyer's permit, for a period of two (2) years, of a person:

(a) Convicted of a federal commercial fishing violation; or

(b) Who falsified data on the Monthly Commercial Roe-bearing Fish Buyer's Report.

(5) An individual whose permit or license has been denied, suspended, not renewed, or revoked may request an administrative hearing pursuant to KRS Chapter 13B.]

Section 13.[14.] Boundaries. The department shall make available on its Web site at [fw.ky.gov](http://fw.ky.gov) the Global Positioning System[(GPS)] coordinates detailing the Kentucky and Ohio border on the Ohio River, for download to personal devices.

Section 14.[15.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Commercial Roe-bearing Fish Harvester's Permit", 2008;

(b) "Application for Commercial Roe-bearing Fish Buyer's Permit", 2008;

(c) "Daily Roe-bearing Fish Harvester's Transaction Report", 2008;

(d) "Monthly Commercial Roe-Bearing Fish Buyer's Report", 2008;

(e) "Monthly Report of Commercial Fish Harvest in Kentucky", 2008; and

(f) "List of GPS coordinates for Ohio River Boundary with Ohio", 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: September 10, 2012

FILED WITH LRC: September 11, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 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 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 October 31, 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](mailto: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 commercial fishing requirements, protects certain species from overharvest, and regulates the buying and selling of roe-bearing species of rough fish.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage rough fish populations in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulation bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.175(3) authorizes the department to es-

establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. 17 protects the shovelnose sturgeon from harvest in the Mississippi River because of similarity of appearance with the federally protected pallid sturgeon.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of the statutes and federal regulation by defining the requirements for commercial fishing in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment will make it illegal for a commercial fisherman whose license has been suspended or revoked in Kentucky or another state to work as a helper for another licensed Kentucky commercial fisherman. It will require a suspension of a commercial fishing license if a commercial fisherman does not meet reporting deadlines for three or more months in a license year. A suspension will remain in effect until all reports are received. It will also require a suspension for a period of 90 days if a commercial fisherman fails to submit required reports for four or more months in a license year. Lastly, this amendment will require a licensed commercial fisherman to report to the department within 24 hours any lost, stolen, or irretrievable commercial fishing gear.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to make it illegal for a licensed commercial fisherman whose license has been suspended to continue to commercial fish as a helper for another commercial fisherman. It is needed to increase compliance with mandatory commercial fish harvest reporting. It is also needed to make it mandatory for a commercial fisherman to report lost, stolen, or irretrievable gear to the department to reduce illegal activities.

(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: It will affect all of the 297 licensed commercial fishermen.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A commercial fisherman whose license has been suspended will no longer be able to continue to commercial fish as a helper. Commercial fishermen who continue to be delinquent turning in their commercial harvest reports will now face a potential three month suspension of their commercial fishing license. It will now be mandatory that a commercial fisherman report lost, stolen, or un-retrievable fishing gear to the department within 24 hours.

(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 individuals complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen will reduce their chances of being illegally cited for commercial gear that was stolen, lost, or is irretrievable.

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

(a) Initially: This regulation amendment will not result in increased costs to the department.

(b) On a continuing basis: There will be no additional cost on a continuing basis 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 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: No fees will be directly or indirectly established.

(9) TIERING: Is tiering applied? Tiering was not applied to this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to set seasons, establish bag or creel limits, and to regulate the buying, selling, or transporting of fish and wildlife. KRS 150.175(3) authorizes the establishment of a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. 17 protects the shovelnose sturgeon from harvest in the Mississippi River because of similarity of appearance with the federally protected pallid sturgeon.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue will not be generated by this administrative regulation for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue will not be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional cost will be incurred for the first year as the Department's Law Enforcement Division already enforces the regulation.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

#### 301 KAR 2:225. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340, 150.603

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes the requirements[procedures] for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

Section 1. Definitions. (1) "Dove" means mourning dove or white-winged dove.

(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.

(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

(4) "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.

Section 2. Season Dates. (1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation.

(2) The following seasons shall apply to migratory bird hunting:

(a) Dove, beginning on:

1. September 1 for fifty-four (54) consecutive days;

2. Thanksgiving Day for nine (9) consecutive days; and

3. The Saturday after Christmas for seven (7) consecutive days.

(b) Woodcock, beginning on November 1 for forty-five (45) consecutive days.

(c) Common snipe, beginning on:

1. The third Wednesday in September for forty (40) consecutive days; and

2. Thanksgiving Day for sixty-seven (67) consecutive days.

(d) Wood duck and teal, beginning on the third Wednesday in September for five (5) consecutive days.

(e) Virginia rail, sora rail, common moorhen, and purple gallinule, beginning on September 1 for seventy (70) consecutive days.

(f) Canada goose, beginning September 1 for fifteen (15) consecutive days except that the following areas, as established in 301 KAR 2:224, shall be closed:

1. Public land in the Ballard Zone;~~[Ballard reporting area;]~~

2. Public ~~land~~lands in the West-Central Goose Zone; and

3. The Northeast Goose Zone.

Section 3. Bag and Possession Limits. (1) A person shall not exceed the following limits:

(a) Dove:

1. Daily limit of fifteen (15); and

2. Possession limit of thirty (30).

(b) Eurasian collared dove: No limit, except that a hunter, if in the field or during transport, shall keep one (1) of the following attached to the bird:

1. The head; or

2. A fully-feathered wing.

(c) Woodcock:

1. Daily limit of three (3); and

2. Possession limit of six (6).

(d) Common snipe:

1. Daily limit of eight (8); and

2. Possession limit of sixteen (16).

(e) Virginia and sora rail, singly or in aggregate:

1. Daily limit of twenty-five (25); and

2. Possession limit of twenty-five (25).

(f) Common moorhen and purple gallinule, singly or in aggregate:

1. Daily limit of fifteen (15); and

2. Possession limit of thirty (30).

(g) Wood duck and teal:

1. Daily limit of four (4), which shall not include more than two (2) wood ducks; and

2. Possession limit of eight (8), which shall not include more than four (4) wood ducks.

(h) Canada goose:

1. Daily limit of two (2); and

2. Possession limit of four (4).

(2) A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep one (1) of the following attached to the bird:

(a) The head; or

(b) A fully-feathered wing.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during the times established in this section. (1) If hunting dove on WMA land, a person shall hunt:

(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(2) If hunting dove on private land, a person shall hunt:

(a) Between 11 a.m. and sunset on September 1; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and~~[20,]~~ 21 for waterfowl hunting; or

(c) Shot larger than size "T".

Section 6. Hunter Orange. A person shall be exempt from hunter orange requirements pursuant to 301 KAR 2:132 and 2:172 if:

(1) Hunting waterfowl or doves; or

(2) Accompanying a person hunting waterfowl or doves.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A person shall not:

(a) Hunt wood duck or teal on an area closed to waterfowl hunting as established in 301 KAR 2:222;

(b) Hunt in an area marked by a sign as closed to hunting; or

(c) Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on any of the following areas shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and~~[20,]~~ 21:

(a) Ballard WMA;

(b) Boatwright WMA;

(c) Doug Travis WMA;

(d) Duck Island WMA;

(e) Kaler Bottoms WMA;

(f) Kentucky River WMA;

(g) Ohio River Islands WMA;

(h) Sloughs WMA;

(i) South Shore WMA;

(j) Yatesville Lake WMA; and

(k) A WMA wetland management unit that is posted by sign.

(3) At Ballard WMA, a person shall not hunt:

(a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or

(b) Woodcock.

(4) In the Swan Lake Unit of Boatwright WMA, a person shall not hunt:

(a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe after October 13; or

(b) Woodcock.

(5) At Miller Welch - Central Kentucky WMA, a person shall not hunt:

(a) Dove or snipe after October 13; or

(b) Woodcock.

(6) At Grayson Lake WMA, a person shall not hunt:

(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;

(b) On Deer Creek Fork; or

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(c) On Camp Webb property or the state park, except for youths drawn for the quota dove hunt on Camp Webb property on the first Saturday in September.

(7) At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.

(8) At West Kentucky WMA, a person shall not hunt Canada geese during the September season.~~[hunt:~~

~~(a) On "A" Tracts; or~~

~~(b) Canada geese during the September season.]~~

(9) At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the island.

(10) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 10, 2012

FILED WITH LRC: August 27, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 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 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 October 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109 ext. 4507, fax (502) 564-9136, email [fwpubliccomments@ky.gov](mailto: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 seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the United States Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the hunting of migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2012–2013 migratory bird seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national and interna-

tional management goals.

(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 Canada goose hunting on private lands within the Ballard Zone during the September season.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to increase waterfowl opportunity during the September Canada goose season.

(c) How the amendment conforms to 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: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities in question (3) must continue to comply with this administrative regulation but will not have to comply with any further restrictions than in previous years, but rather hunting opportunity will increase slightly in the Ballard Zone.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be increased opportunity to hunt migratory game birds.

(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 administrative cost to the Department.

(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 implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all waterfowl bird hunters.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(3) Estimate the effect of this administrative regulation on the



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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

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. The federal mandate defines the maximum days and bag limits permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives may necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's migratory bird hunters.

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

#### 301 KAR 4:070. Scientific and educational collecting permits.

RELATES TO: KRS 150.010, 150.170, 150.180, 150.195, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.183, 150.275, 50 C.F.R. 17

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.183(3) authorizes the department to establish the terms and conditions for allowing the importation, transportation, possession, or sale of

endangered species. KRS 150.275 authorizes the department to issue permits to persons for commercial nuisance wildlife control, and scientific or educational purposes. 50 C.F.R. Part 17 establishes the requirements for federally protected species. This administrative regulation establishes the requirements for the issuance and use of scientific and educational collecting permits.

Section 1. Definitions. (1) "Agent of the state" means a status that is granted by the department to an individual working on a project on behalf of the department.

(2) "Collected", "Collecting", or "Collection" means any sampling activity that removes, even temporarily, any protected wildlife from the wild in Kentucky.

(3) "Educational collection permit" means a permit issued by the department to an individual for use in:

(a) The instruction of students; or

(b) A university-related research project.

(4) "Federally protected species" means any species:

(a) Listed by the United States Fish and Wildlife Service as:

1. Threatened; or

2. Endangered; or

(b) Any bird protected under the:

1. Migratory Bird Treaty Act; or

2. Bald and Golden Eagle Protection Act.

(5) "Permit holder" means a person who possesses one (1) of the following two (2) valid permits issued by the department:

(a) An educational collection permit; or

(b) A scientific collection permit.

(6) "Scientific collection permit" means a permit issued by the department to an individual for the purpose of conducting a scientific study for which remuneration is received.

(7) "Watershed" means an 8-digit Hydrologic Unit Code assigned by the United States Geological Survey.

Section 2. Permit Issuance and Requirements. (1) A person shall obtain the applicable collection permit prior to collecting any protected wildlife species in Kentucky, except that a representative of the department who is engaged in collecting wildlife in an official capacity shall not be required to possess a collection permit.

(2) A person shall:

(a) Apply for an educational or scientific collection permit on a Scientific and Educational Wildlife Collection Permit Application form provided by the department; and

(b) Submit to the department the appropriate permit fee established in 301 KAR 3:022 along with the completed application.

(3) The department shall only issue a scientific or educational permit to a person who:

(a) Has completed a college course in species taxonomy or species identification for the species group to be collected;

(b) Has one (1) year of experience in collecting the species group to be collected; or

(c) Submits a signed letter from a person qualified to be a scientific or educational permit holder attesting to the applicant's ability in species identification.

(4) A permit holder shall possess a valid federal permit or a department-issued agent of the state letter if collecting a:

(a) Federally protected species;

(b) Bat species;

(c) Mussel species; or

(d) Fish species in a watershed known to contain a federally protected fish species.

(5) A permit holder shall complete a Project Proposal Form for every project involving the sampling or collecting of:

(a) A federally protected species;

(b) A bat;

(c) A mussel; or

(d) Fish in a watershed known to contain a federally protected fish species.

(6) A permit holder shall submit to the department each Project Proposal Form at least fifteen (15) days in advance of the project.

(7) A permit holder shall comply with all requirements pertaining to a federally protected species pursuant to 50 C.F.R. Part 17.

(8) A permit holder shall:

(a) Not intentionally kill a federally protected species; and

(b) Report any inadvertent killing of a federally protected species by:

1. Calling the department's Wildlife Diversity Program at 1-800-858-1549 within twenty-four (24) hours of the kill; and

2. Submitting all dead specimens to the department within seven (7) days of taking.

(9) A permit holder shall not use a scientific or educational collection permit in lieu of a:

(a) Hunting license;

(b) Fishing license; or

(c) Trapping license.

(10) While collecting specimens, a permit holder shall carry a:

(a) Valid scientific or educational collection permit; or

(b) Photocopy of a valid collection permit.

(11) A permit holder who is collecting wildlife that will not be killed shall release the wildlife at the capture location.

Section 3. Reporting Requirements, Permit Renewal, and Revocation. (1) A permit holder shall submit to the department all wildlife collection data for the previous calendar year:

(a) By January 15;

(b) Electronically on the department's Web site at fw.ky.gov; and

(c) Prior to renewal of a collection permit.

(2) A permit holder who is submitting annual collection data on the department's Web site shall complete the data submittal process in its entirety.

(3) The department shall not renew a scientific or educational collection permit until the permit holder has submitted the previous year's collection data via the electronic data submittal process on the department's Web site.

(4) A scientific or educational permit shall be revoked or denied by the department if the permit holder:

(a) In the last year has been convicted of a violation of:

1. This administrative regulation;

2. A federal regulation involving the collection of federally protected species pursuant to 50 C.F.R. Part 17; or

3. Another state's regulation or law pertaining to the collection of protected wildlife; or

(b) Falsifies the permit application.

(5) A person who has had a scientific or educational collection permit revoked shall be ineligible to apply for a period of one (1) year.

(6) A person who has had a permit denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

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

(a) "Project Proposal Form", 2012 edition; and

(b) "Scientific and Educational Wildlife Collection Permit Application", 2012 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. E.S.T. [KRS 150.025, 150.275, 150.183

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025, 150.183 and 150.275 authorizes the department to promulgate administrative regulations regarding the possession of wildlife for zoological, educational or scientific purposes and grants the commissioner the authority to issue a scientific or educational permit to a qualified person. This administrative regulation establishes the procedures for applying for a Scientific and Educational Collecting Permit from the department, procedures for collecting wildlife and procedures for reporting collected wildlife. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Agent" of the state" means a status that will be granted only to other Kentucky government agencies or those individuals conducting work on projects conducted on behalf of the department

(2) "Educational wildlife collecting" means the taking and subsequent possession or release of protected wildlife by an individual

or nonprofit organization for use in the bona fide instruction of students or for a university-related research project.

(3) "Federally-protected species" means any wildlife species listed by the United States Fish and Wildlife Service as threatened or endangered, and any birds protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

(4) "Protected wildlife" is defined by KRS 150.010.

(5) "Scientific wildlife collecting" means the taking and subsequent possession or release of protected wildlife specimens for the purposes of conducting scientific investigations or evaluations for which remuneration is received.

(6) "Watershed" means an 8-digit Hydrologic Unit Code (HUC) as defined by the United States Geological Survey.

Section 2. Permit Required. (1) A permit shall be required by all persons, except an employee of the department engaged in his or her official duties, involved in scientific or educational collecting of any protected wildlife in the state of Kentucky.

(2) Federally-protected wildlife shall not be collected unless the collector holds a Scientific or Educational Collecting Permit from the department and a valid federal permit or a letter designating him or her as an agent of the state.

(3) A Scientific or Educational Collecting Permit shall not be used in lieu of a hunting, fishing, or trapping license.

Section 3. Federally-protected species. (1) An application for a Scientific or Educational Collecting Permit for all federally-protected species and fishes within a watershed known to harbor federally threatened or endangered fish species shall be accompanied by a project proposal stating the specific goals and locations of the collecting activities.

(2) A person who applies for a Scientific or Educational Collecting Permit for bats, mussels, copperbelly watersnakes or federally protected species shall submit a written affidavit stating he or she possesses the ability to identify federally protected species in the field.

(3) A person who applies for a Scientific or Educational Collecting Permit for fishes who wishes to collect in a watershed known to harbor federally threatened or endangered fish species, or is specifically sampling for those species, shall submit a written affidavit stating he or she possesses the ability to identify federally protected fish species in the field.

(4) Federally-threatened or endangered species shall not be killed intentionally. Federally threatened or endangered species inadvertently killed shall be reported to the Kentucky Department of Fish and Wildlife Resources Wildlife Diversity Program at 1-800-858-1549 within twenty-four (24) hours of death and all specimens submitted to the department within seven (7) days of taking.

(5) A department-approved, qualified person as listed on the Scientific or Educational Collection Permit shall be present at all collection activities involving:

(a) Bats;

(b) Mussels;

(c) Fishes within watersheds known to harbor federally protected fishes; or

(d) Federally-protected species.

(6) For collection activities involving federally threatened or endangered species, the Scientific or Educational Collecting Permit holder shall:

(a) Hold a valid federal permit or a letter designating him or her as an agent of the state; and

(b) Notify the Wildlife Diversity Program Coordinator weekdays between 8 a.m. and 4:30 p.m. at (800) 858-1549 at least fifteen (15) days in advance of collection activities.

Section 4. Issuance of Permits, Possession Requirements, and Revocation. (1) Issuance of permits. A permit may be issued upon receipt of:

(a) A completed application;

(b) A Scientific and Educational Collecting Permit Qualifications Form for each person listed on the application;

(c) Supporting materials as required in Section 3 of this administrative regulation; and

(d) Remittance of the correct fee as listed in 301 KAR 3:022.



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(2) A permit is valid from January 1 through December 31 of the same year.

(3) Possession requirements. At least one (1) person in a field party shall carry a valid Scientific or Educational Collecting Permit or photocopy of the same. Each person collecting protected wildlife shall be listed on the Scientific or Educational Collecting Permit.

(4) Suspension. A scientific or educational collecting permit may be suspended while infractions are investigated or pending results of court proceedings or litigation.

(5) Revocation.

(a) Scientific or Educational Collecting Permits shall be revoked without refund if the permittee is found in violation of or convicted of violating any federal or state law or regulation involving the collection of protected wildlife as listed in this administrative regulation.

(b) A Scientific or educational collecting permit shall be revoked without refund if the permittee falsifies any application document.

(c) A person whose permit has been revoked shall be ineligible to apply for another Scientific or Educational Collecting Permit or be an assistant on another Scientific or Educational Collecting Permit for a period of one (1) year.

(d) An individual whose permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 5. Reporting Requirements. (1) Invertebrates. The following list of invertebrates shall be reported per the specifications outlined in subsection (2) of this section.

a. Mussels (Class Bivalvia);

b. Crayfish (Order Decapoda); and

c. Federally threatened or endangered invertebrates.

(2) Scientific Collecting Permit.

(a) Data shall be submitted annually and prior to renewal of new permits.

(b) Data shall be in a format specified by the department.

(c) Required data shall include:

1. Scientific name (Genus and species) of each species recorded/collected;

2. Site location including:

a. County; and

b. 7.5-minute USGS topographic quadrangle name;

3. Longitude and latitude in degrees/minutes/seconds format North American Datum 1983 of each species occurrence/collection;

4. Date of occurrence/collection;

5. Number of individuals recorded/collected for each species;

6. Observers for each record; and

7. Disposition of the specimen.

(3) Educational Collecting Permit.

(a) University-related research projects. Data shall be submitted per the specifications outlined in subsection (1) of this section.

(b) With the exception outlined in subsection (2) of this section, no data reporting requirements shall exist for Educational Collecting Permit holders.

Section 6. Disposition of Collected Wildlife. All captured protected wildlife not killed shall be released at the capture location.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Scientific and Educational Collecting Permit Application, edition 2008";

(b) "Scientific and Educational Collecting Permit Qualifications Form, edition 2003"; and

(c) "Map of 8-digit USGS HUC of Kentucky, edition August 2003".

(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, 8:30 a.m. to 4:30 p.m.]

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner  
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: September 10, 2012

FILED WITH LRC: September 11, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, #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 the requirements for obtaining and using a scientific or educational wildlife collection permit.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure reasonable oversight of wildlife collection activities for educational or scientific purposes in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.183(3) authorizes the department to establish the terms and conditions for allowing the importation, transportation, possession, or sale of endangered species. KRS 150.275 authorizes the department to issue permits to persons for commercial nuisance wildlife control, and scientific or educational purposes, and to set fees for the issuance of these permits. 50 C.F.R. Part 17 establishes the requirements pertaining to federally protected species. This administrative regulation establishes the requirements for the issuance and use of scientific and educational collection permits.

(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 requirements and minimum standards for the issuance and use of scientific or educational collection permits.

(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 strengthen the standards for granting an "Agent of the State" designation, require a permit for each individual who is collecting wildlife, require individuals who collect federally protected species to obtain either an Agent of the State designation or a federal collection permit, reduce the penalty for revocation from three (3) years to one (1) year before an individual can reapply for a new permit, and require individuals to comply with all federal requirements when dealing with federally protected species.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify who is eligible for "agent of the state" status to strengthen requirements for those people who collect federally protected species, and to remove unenforceable requirements.

(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 hold a Scientific and Educational Collection Permit will be affected by this amendment. The department estimates that approximately 200 individuals 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: Individuals will have to first obtain a federal collection permit to collect federally protected species and then obtain a state scientific or educational collection permit in order to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new cost to individuals who collect species that are not federally protected to comply with this amendment. For those individuals needing a federal permit, they will need to pay a \$100 fee to the U.S. Fish and Wildlife Service.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who collect federally protected species will have the security of possessing a federal permit or an Agent of the State designation. Individuals who qualify for a scientific or educational permit to collect species that are not federally protected will not have to fill out additional personal qualifications information.

(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 department 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 other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees, or directly or indirectly increased any fees: No new state fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals are required to obtain a scientific or educational collection permit.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Divisions of Wildlife, Fisheries, and Law Enforcement in the Department will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.183(3) authorizes the department to establish the terms and conditions for allowing the importation, transportation, possession, or sale of endangered species. KRS 150.275 authorizes the department to issue permits to persons for commercial nuisance wildlife control, and scientific or educational purposes, and to set fees for the issuance of these permits. 50 C.F.R. Part 17 establishes the requirements pertaining to federally protected species. This administrative regulation establishes the requirements for the issuance and use of scientific and educational collection permits.

(3) Estimate the effect of this administrative regulation on the

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue for the department during the first year. It is estimated that less than \$10,000 will be generated from permit costs. The revenue generated will simply offset the cost of administering the 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? This administrative regulation will not generate any additional revenue in subsequent years, however, it is estimated that less than \$10,000 will be generated in subsequent years.

(c) How much will it cost to administer this program for the first year? The amount of money generated by the issuance of these permits will simply offset the cost of administering this regulation.

(d) How much will it cost to administer this program for subsequent years? The same will be true 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:

#### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Technical and Administrative Support (Amendment)

#### 418 KAR 1:010. Definitions for 418 KAR Chapter 1.

RELATES TO: KRS 146.415(1), 146.550-146.570, 446.010(18)

STATUTORY AUTHORITY: KRS Chapter 13A, 146.550-146.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) directs the board to promulgate, in accordance with the provisions of KRS Chapter 13A, administrative regulations deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. The purpose of this administrative regulation is to define terms used in 418 KAR Chapter 1.

Section 1. ~~Definitions for 418 KAR Chapter 1. The following definitions shall apply to 418 KAR Chapter 1.~~

(1) "Access land" means land necessary for reasonable and planned ingress and egress from the project site.

(2) "Acquisition" means the procurement of land and includes options, required carrying costs and relocation assistance, appraisals, maps, surveys, studies, title opinions, title insurance and environmental audits, inspections and remediation.

(3) "Areas important to migratory birds" means those areas important to the reproduction and survival of migratory birds, including, but not limited to:

(a) Large tracts of contiguous forest;

(b) Wooded greenspace areas;

(c) Shallow open water habitats with expansive areas of shoreline; and

(d) Wetlands or wetland complexes including marshes, deep water sloughs, and swamps;

(e) Natural grasslands; and

(f) Riparian corridors.

(4) "Board" means the Kentucky Heritage Land Conservation Fund Board.

(5) "Buffer land" means land that will aid in protecting the project site from harm, or will prevent degradation of the visitor experience at the project site.

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(6) ~~["Carrying costs" include, but are not limited to, interest on borrowed money, reasonable management costs consistent with the preliminary RMP and incurred while land is being held pending sale, and reimbursement of reasonable overhead costs not to exceed three (3) percent of the sale price. (7) "Chair" means the chairperson of the~~ Kentucky Heritage Land Conservation Fund board.

~~(7) [(8)]~~ "Fund" means the Kentucky Heritage Land Conservation Fund.

~~(8) [(9)]~~ "Grant" means an award of money from the Kentucky Heritage Land Conservation Fund pursuant to KRS 146.570(f).

~~(9) [(10)]~~ "Greenspace" means undeveloped land in or around urban areas, including, but not limited to, forests ~~or~~ and other natural vegetation, stream-side corridors, natural areas, and abandoned rights-of-way.

~~(10) [(11)]~~ "Land" ~~the definition of "land" is governed by KRS 446.010(18).~~ (12) "Local governments" means ~~local government entities, including, but not limited to,~~ county governments, municipalities, school districts, and special districts, or a combination thereof.

~~(11) [(13)]~~ "Management" means the stewardship necessary to fulfill the purposes of KRS 146.550 through 146.570 and 418 KAR Chapter 1 and encompasses ~~the initial~~ site development costs and reasonable operating costs ~~including, but not limited to,~~ consultant and contractor fees, facility development, supplies, materials, site-specific equipment and staff costs.

~~(12) [(14)]~~ "Money" means money received from the Kentucky Heritage Land Conservation Fund. ~~(15)] "Natural area" means any area of land or water, or of both land and water, which either retains or has reestablished in the judgment of the board its natural character, or which has natural flora, fauna, biological, ecological, geological, scenic or archaeological features of scientific, aesthetic, cultural, or educational interest to the public~~ ~~the definition of "natural area" is governed by KRS 146.415(1).~~

~~(13) [(16)]~~ "Natural functions" means the interrelationships among the living and nonliving components of ecosystems and includes: ~~but is not limited to;~~

~~(a) Energy fixation and conversions;~~

~~(b) Ecosystem productivity and biomass accumulation;~~

~~(c) Nutrient cycling;~~

~~(d) Storage, transport, release, and retention of water and other nutrients;~~

~~(e) Food web relationships and dynamics;~~

~~(f) Weathering, development and stabilization of substrates; and~~

~~(g) Absorption and neutralization of pollutants~~ ~~but is not limited to, energy fixation and conversions; ecosystem productivity and biomass accumulation; cycling; storage, transport, release, and retention of water and other nutrients; food web relationships and dynamics; weathering; and development of substrates.~~

~~(14) [(17)]~~ "Natural state" means the condition of any area which retains, has substantially reestablished, or is in the process of reestablishing, an indigenous ecosystem.

~~(15) [(18)]~~ "Outdoor recreation" means activity on a subject property that does not cause ~~meaningful~~ harm to the property or its natural state, or hinder the heritage land conservation purposes of KRS 146.550 through 146.570.

~~(16) [(19)]~~ "RMP" means resource management plan.

~~(17) [(20)]~~ "Project" means land acquisition and management activities for the purposes set forth in KRS 146.550 through 146.570. ~~(21)] "State agency" means any department, program cabinet, institution, board, commission, office or agency of the Commonwealth of Kentucky.~~

~~(18) "State colleges and universities" means accredited colleges and universities located in the Commonwealth of Kentucky. [(22)] "Tract" means, in the case of final RMPs, all parcels of land within a project boundary approved by the board, and, in the case of preliminary RMPs, all parcels of land within the project boundary included in the application to the board.~~

~~(23) "USGS" means United States Geological Survey.~~

~~(24) "Wetlands" the definition of "wetlands" is governed by KRS 146.550(1).]~~

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 12, 2012

FILED WITH LRC: September 13, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012 at 10:00 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing October 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 October 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email [Michael.Mullins@ky.gov](mailto:Michael.Mullins@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 418 KAR Chapter 1.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide definition of terms used in 418 KAR Chapter 1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.560(2) directs the Board to promulgate administrative regulations deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. This administrative regulation provides definitions necessary to aid the reader in the proper interpretation of the administrative regulations contained in the 418 KAR Chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing definitions for 418 KAR Chapter 1.

(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 remove definitions that are no longer used as well as providing updated information to current definitions. The amendments will also correct language to ensure the administrative regulation conforms to current KRS 13A standards.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to remove definitions that are no longer used as well as provide updated information to current definitions. The amendments will also correct language to ensure the administrative regulation conforms to current KRS 13A standards.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments not only ensure terms defined in the administrative regulation are used in the chapter but also update the administrative regulation to current KRS 13A standards.

(d) How the amendment will assist in the effective administration of the statutes: The amendments remove terms that are no longer used as well as updating terms that are currently used.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact Kentucky state agencies, colleges and universities, and Kentucky local governments that are interested in applying for grants from the Heritage Land Conservation Fund. There were approximately 20 grants applications for FY 2012.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities from listed in questions (3) will be required to use the amended definitions in the administrative regulation to interpret 418 KAR Chapter 1.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any additional cost for entities to comply with the amendments to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be using terms that are accurate terms for the interpretation of 418 KAR Chapter 1.

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

(a) Initially: The amendments to this administrative regulation will not require any additional cost to be absorbed by the administrative body.

(b) On a continuing basis: There will be no continuing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded from the Heritage Land Conservation 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 need to increase fees or funding to administer this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? No. All applicants for grant funding will be treated equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Technical and Administrative Support, the Heritage Land Conservation Fund Board and those agencies listed in KRS 146.570(4).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.550 through 146.570.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any funds for use by the cabinet.

(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 funds for use by the cabinet on a continuing basis.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs associated with this amendment on a continuing basis.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

#### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Technical and Administrative Support (Amendment)

#### 418 KAR 1:020. Administrative procedures of the board.

RELATES TO: KRS 61.805-61.850, 61.870-61.884, 146.550-146.570,

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes those procedures.

Section 1. Meetings. (1) Regular meetings. The board shall meet quarterly at times and places designated by the chair. The board shall provide for a yearly schedule of regular meetings pursuant to KRS 61.820.

(2) Special meetings.

(a) If a regular meeting is rescheduled, the board shall provide written notice of the rescheduled meeting pursuant to KRS 61.823(3) through (4).

(b) ~~[(3) Special meetings.]~~ The chair or a majority of the members of the board may call a special meeting. The board shall provide written notice of a special meeting pursuant to KRS 61.823(3) through (4), unless the meeting is an emergency meeting, in which case the board shall comply with the notice requirements of KRS 61.823(5).

(3) ~~[(4)]~~ Closed sessions. Deliberations on the future acquisition of land may be closed to the public when publicity would be likely to affect the value of the land. Sessions may also be closed to the public for any other reason permitted by KRS 61.810. The board shall meet the requirements for closed sessions set forth in KRS 61.815.

Section 2. Quorum. (1) Seven (7) members of the board shall be required to constitute a quorum of which:

(a) Three (3) shall be members pursuant to KRS 146.560(1)(a) through (e); and

(b) Four (4) shall be members pursuant to KRS 146.560(1)(f) through (k).

(2) The board shall act by a majority of those present at the meeting and constituting a quorum.

Section 3. Meeting Participation. (1) A board member may participate in a meeting in person or by video teleconference pursuant to KRS 61.826.

(2) The designation of a board member pursuant to KRS 146.560(1)(a) through (e) shall be in writing and shall be submitted to the chair prior to the first meeting the designee attends. If the requirements of this subsection are not met, the designee shall not be permitted to vote.

Section 4. Meeting Minutes, Annual Report. (1) Meeting minutes. Minutes of each meeting of the board shall be prepared and mailed to each member of the board. Except for a closed session meeting, the minutes shall be provided to an interested party upon written request to the board in accordance with the requirements of KRS 61.872(2)[chair].

(2) Annual report. An annual report of the activities of the board for the previous year shall be prepared. This report shall include a cumulative list of all approved projects and a brief status report of all areas acquired through the fund. The board shall submit the annual report to the Legislative Research Commission by October 1 of each year. Upon receipt of the annual report, the Legislative Research Commission may publish it in the Legislative Record or other appropriate publication.

Section 5. ~~Inspection of Public Records. Public records of the board shall be made available for public inspection in accordance with the Kentucky Open Records Act, KRS 61.870 through 61.884.~~

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

The title and address of the official custodian of the board's records shall be Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601.

~~Section 6. Principal Office. The principal office of the board shall be located at 375 Versailles Road, Frankfort, Kentucky 40601. Its regular office hours are 8 a.m. to 4:30 p.m., Monday through Friday, except for state holidays.~~

~~Section 7.] Officers. The board shall annually nominate and elect a vice-chair and a treasurer. The vice-chair shall preside over meetings in the absence of the chair. The treasurer, which shall be a member appointed pursuant to KRS 146.560(1)(f) through (k), shall monitor and report disbursements and receipts.~~

Section 6[8]. Committees. (1) There shall be two (2) standing committees, a projects review committee and a stewardship committee. The chair, with board approval, may also create other committees for specific purposes and a definite term.

(2) The projects review committee:

(a) Shall:

1. Review~~[state agency]~~ project applications submitted in accordance with ~~418 KAR 1:040~~~~[418 KAR 1:030 and competitive grant applications submitted in accordance with 418 KAR 1:040];~~

2. Determine the compliance of an application with the four (4) priorities for acquisition set forth in KRS 146.560(2)(a) through (d);

3. Determine completeness and accuracy of an application; and

4. Prepare and submit a report of its findings to:

a. Each individual board member at least fifteen (15) days prior to a meeting at which the application will be considered by the board; and

b. The applicant;

(b) May:

1. Assist an applicant in the preparation of an application; and

2. Contact an applicant before the due date of a report to correct a minor deficiency in the application.

(3) The stewardship committee shall:

(a) Review and make recommendations to the board regarding preliminary and final RMPs; and

(b) Ensure that the management of land purchased, in whole or in part, with fund money meets the requirements of:

1. KRS 146.550 through 146.570;

2. 418 KAR Chapter 1;

3. A memorandum of agreement between the board and a recipient of fund money;

4. A conservation easement held by the Commonwealth for the use and benefit of the board~~[which pertains to the project site];~~ and

5. The latest RMP approved by the board.

(4) A committee shall include at least three (3) members, two (2) of whom are board members, one having been appointed to the board by the Governor of Kentucky or specified by KRS 146.560(1)(f) – (k)~~[consist of two (2) or more board members]~~. The chair shall appoint members and a committee chair, and shall be a voting ex officio member of each committee~~[to be a committee, subject to approval of the board]~~.

(5) A majority of the members of a committee shall constitute a quorum. A committee shall act by a majority of those present at a meeting at which a quorum is present.

(6) [A committee member:

(a) Shall serve:

1. For a term of one (1) year;

2. Until removed; or

3. Until a successor is appointed.

(b) May be appointed to a successive term.

(7) Committee membership shall be established at the last meeting of each calendar year.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 12, 2012

FILED WITH LRC: September 13, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

October 23, 2012 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing October 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 October 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email [Michael.Mullins@ky.gov](mailto:Michael.Mullins@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for meetings, establishing quorums, determining officers and committees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to layout the proper procedures for conducting meetings determining officers, and establishing committees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes those procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing information that will allow the Heritage Land Conservation Fund review and approve projects and grants for the acquisition of land.

(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 removes information related to the Heritage Land Conservation Fund Board's office location and removes a section related to inspection of public documents. KRS 61.872(2) is referenced regarding inspection of public records. The amendments also make changes to the language to ensure the administrative regulation conforms to current KRS 13A standards.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to remove information that is outdated or no longer needed and to ensure the administrative regulation conforms to current KRS 13A standards.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. The amendments correct language regarding office location and simply references statutes regarding inspection of public records.

(d) How the amendment will assist in the effective administration of the statutes: The amendments remove language related to the office location of the board and also reference the statute regarding inspection of public records.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact Kentucky state agencies, colleges and universities, and Kentucky local governments that are interested in applying for grants from the Heritage Land Conservation Fund. There were approximately 20 grants applications for FY 2012.

**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Technical and Administrative Support  
(Amendment)**

**418 KAR 1:040. Grant applications~~[Competitive grants]~~.**

RELATES TO: KRS 146.550-146.570, 382.800-382.860  
STATUTORY AUTHORITY: KRS 146.560(2), 146.565  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes the procedures for review and approval of grants funded to state agencies, local governments, and state colleges and universities pursuant to KRS 146.570(4)(a) and (f).

Section 1. Application. (1) A state agency, local government, and state college or university seeking a grant pursuant to KRS 146.570(4)(f) shall submit to the board a completed ~~[competitive]~~ grant application package. Application shall be made on the Kentucky Heritage Land Conservation Fund Board Application", Form HL-1(a) through (c) dated July 2012~~[HL-1]~~.

- (2) The application shall include:
  - (a) ~~A cover letter~~~~[The application form]~~;
  - (b) ~~The application form~~~~[Cover letter]~~;
  - (c) ~~Location map~~~~[Site map]~~;
  - (d) Site or project description;
  - (e) Preliminary Resource Management Plan;
  - (f) Copy of the portion of a 1:24,000 topographical map showing the approximate project boundaries; and
  - (g) Project costs worksheet;
  - (h) ~~Comparison of the project site to the surrounding landscape (competitive applicant only);~~
  - (i) ~~A statement of the importance of the project to the applicant and to the Commonwealth of Kentucky (competitive applicant only);~~
  - (j) ~~Explanation of why the project qualifies for fund money (competitive applicant only);~~
  - (k) ~~Two (2) or more project endorsements (competitive applicant only); and~~
  - (l) ~~Description of partnerships with other agencies]~~.
- (3) Money expended by an applicant in connection with a denied application for funds, a grant, or project under this section shall not be reimbursed to the applicant.
- (4) An applicant shall not supply false or misleading information to the board and shall provide to the board verification that all information in the grant application is true and accurate.
- (5) Grant applicants may submit joint applications. The preliminary RMP for a joint application shall specify which entity will perform each aspect of management. Each joint applicant shall remain responsible for all aspects of management.

Section 2. Review of Application. (1) After reviewing the report received from the Projects Review Committee pursuant to 418 KAR 1:020, Section 6(2)(a)~~[8(2)(a)]~~ of this administrative regulation, each board member shall review the application package and evaluate it based on the following criteria:

- (a) Whether the fund contains adequate money to fund the proposed project;
- (b) Whether the proposed project meets one (1) or more of the~~[following]~~ priorities for acquisition listed at KRS 146.560(2)(a) through (d);
- (c) Whether the proposed acquisition is one (1) of the areas referred to at KRS 146.565:
  - 1. ~~A natural area that meets the priorities for acquisition as set forth in KRS 146.560(2)(a) through (d);~~
  - 2. ~~An area important to migratory birds;~~
  - 3. ~~An area that performs an important natural function that is subject to alteration or loss; and~~
  - 4. ~~An area to be preserved in its natural state for:~~
    - a. ~~Public use;~~
    - b. ~~Outdoor recreation; and~~

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities from listed in questions (3) will be required to comply with the minor changes associated with these amendments.

(b) On a continuing basis: There will be no continuing costs to the administrative body.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in (3) will be provided information which is no longer out of date or incorrect.

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

(a) Initially: The amendments to this administrative regulation will not require any additional cost to be absorbed by the administrative body.

(b) On a continuing basis: There will be no continuing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded from the Heritage Land Conservation 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 need to increase fees or funding to administer this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? No. All applicants for grant funding will be treated equally.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Technical and Administrative Support, the Heritage Land Conservation Fund Board and those agencies listed in KRS 146.570(4).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.550 through 146.570.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any funds for use by the cabinet.

(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 funds for use by the cabinet on a continuing basis.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs associated with this amendment on a continuing basis.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

e. Education;

(c) Whether the proposed acquisition is a natural area or wetland and whether access or buffer land is necessary;

(d) Property costs, seeking to maximize public benefit by taking advantage of:

1. A priority area below fair market value; and

2. Public or private funds available on a matching basis;

(d)(e)] The completeness and accuracy of the application package;

(e)(f)] The information in the application package; (g)] Whether the preliminary RMP furthers the purposes of KRS 146.550 through 146.570;

(f)(h)] The applicant's ability to complete the acquisition and manage the land consistent with the preliminary RMP;

(g)(i)] The significance of the natural and educational resources on the project site;

(h)(j)] The prevalence of this type of project and project site in public systems; and

(i)(k)] The threat of loss or degradation of the project site if not protected; and

(j) The overall cost compared to the benefit to the Commonwealth of Kentucky].

(2) The board:

(a) Shall approve or deny a [competitive] grant application by the vote of a majority of those present at a meeting at which there is a quorum.

(b) May:

1. Amend or attach conditions to the approval of a [competitive] grant application; and

2. Conduct a series of votes to narrow a list of grant applications if the total cost of the applications exceeds the available funds. [(e) Shall not approve an expenditure that exceeds currently available funds.]

(3) Consideration of a grant application may be carried over from meeting to meeting and the board may decline to approve a grant application at a given meeting.

(4) The board may, itself or through an agent, verify the accuracy of the information in a grant application and make such further investigation of the merits of a proposed acquisition as the board deems appropriate.

(5) The board shall mail to the applicant, within fifteen (15) days of board action, written notice of the approval or denial of a grant application and, if denied, the reasons for denial.

Section 3. Agreements. Funds shall not be disbursed until the applicant has entered into a written memorandum of agreement with the board which requires the applicant to comply with:

(1) The requirements of KRS 146.550 through 146.570;

(2) 418 KAR Chapter 1;

(3) [Other applicable laws of the Commonwealth of Kentucky;

(4)] The application;

(4)(5)] A conservation easement which pertains to the project site; and

(5)(6)] The latest RMP approved by the board.

Section 4. [Conservation Easements. A local government shall convey to the Commonwealth of Kentucky a conservation easement in perpetuity over all land acquired, in whole or in part, with fund proceeds. This conveyance shall occur simultaneously with the conveyance of the property to the applicant. The conservation easement shall meet the requirements of KRS 382.800 through 382.860 and ensure that lands acquired are maintained in perpetuity for the purposes set out in KRS 146.560. Section 5.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Heritage Land Conservation Fund Board Grant Application Form, Form Number HL-1(a)";

(b) "Preliminary Resource Management Plan Instructions, Form Number HL-1(b)"; and

(c) "Preliminary Resource Management Plan Template, Form Number HL-1(c)" [HL-1 (January 1999)] is incorporated by reference].

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the office of the Kentucky Heritage

Land Conservation Fund, 375 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 12, 2012

FILED WITH LRC: September 13, 2012 at 2p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing October 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 October 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for review and approval of grants funded to state agencies, local governments, and state colleges and universities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information to state agencies, local governments, and state colleges and universities on the application process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.560(2) directs the Board to promulgate administrative regulations deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. This administrative regulation provides information necessary to apply for grant funds from the Heritage Land Conservation Fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing the necessary information for applicants to follow when applying for grant funds from the Heritage Land Conservation Fund.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation streamline the process removing requirements that were duplicative and also moved information from 418 KAR 1:030 into this administrative regulation where the information is better suited.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to remove information that placed requirements on applicants that were repeated and also streamlined the application process.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments relate to the application process for grant funds which is specifically mentioned in KRS 146.560(2).

(d) How the amendment will assist in the effective administration of the statutes: The amendments remove duplicative requirements and also streamline the application process of applying for grant funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

tive regulation: This administrative regulation will impact Kentucky state agencies, colleges and universities, and Kentucky local governments that are interested in applying for grants from the Heritage Land Conservation Fund. There were approximately 20 grants applications for FY 2012.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: State agencies will be required to comply with new application procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any additional cost for entities to comply with the amendments to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): State agencies will comply with the competitive grant requirements as other entities that apply for funds from the HLCF.

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

(a) Initially: The amendments to this administrative regulation will not require any additional cost to be absorbed by the administrative body.

(b) On a continuing basis: There will be no continuing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded from the Heritage Land Conservation 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 need to increase fees or funding to administer this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? No. All applicants for grant funding will be treated equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Technical and Administrative Support, the Heritage Land Conservation Fund Board and those agencies listed in KRS 146.570(4).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.550 through 146.570.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue for use by the cabinet on a continuing basis.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs associated with this amendment on a continuing basis.

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

regulation.

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

#### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Technical and Administrative Support (Amendment)

#### 418 KAR 1:050. Procedures for acquisition of land.

RELATES TO: KRS 146.550-146.570

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) directs the board to promulgate administrative regulations, in accordance with the provisions of KRS Chapter 13A, on acquisition. This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

Section 1. An applicant shall attempt to acquire:

(1) Land at a price below its fair market value; and

(2) Available matching funds for the purchase of land from a public or private entity.

Section 2. Transfer of Funds. An expenditure approved by the board shall be disbursed promptly after a Memorandum of Agreement has been signed by the grant applicant and the board~~by the Environmental and Public Protection Cabinet, if the recipient of fund money has entered into the written memorandum of agreement required by Section 5 of 401 KAR 1:030 or Section 3 of 401 KAR 1:040~~.

Section 3. Deadline for Acquisition. The project site shall be acquired within two (2) years of board approval of the acquisition. An extension may be granted by the board upon receipt of a written request for extension.

Section 4. Verification. (1) Within ninety (90) days of purchase, a recipient of fund money shall provide to the board, a ~~certified~~ copy of the recorded deed of conveyance for land acquired.

(2) The deed shall:

(a) Indicate that it has been filed of record in the courthouse of the county where the real estate is located; and

(b) Indicate the amount of consideration paid for the real estate, in accordance with KRS 45.450.

Section 5. Deed Restriction. A state agency that has been awarded grant funds pursuant to KRS 146.570(4) shall include in all deeds conveying ownership of property to that agency, as grantee, the following language: "Grantor and grantee hereby acknowledge that a source of funding for the purchase of the property is the Kentucky Heritage Land Conservation Fund, and that as consideration for receiving said funding, Grantee, including its successors and assigns, is required to maintain the property in perpetuity in accordance with the purpose, intent and requirements of the Kentucky Heritage Land Conservation Fund set forth at KRS 145.570 and 418 KAR Chapter 1. Grantee, including its successors and assigns, further acknowledges that it is prohibited from selling, exchanging, encumbering or disposing of any interest in the property without the prior written consent of the Kentucky Heritage Land Conservation Fund, its successors and assigns, and the Kentucky Finance and Administration Cabinet, and that the Grantee, including its successors and assigns, shall ensure that any future owner of the property agrees in writing to be bound in perpetuity to the same restrictions and terms as stated herein."

Section 6. Conservation Easements. A local government, state college, or state university that has been awarded grant funds pursuant to KRS 146.570(4)(f) shall convey to the Commonwealth of Kentucky a conservation easement in perpetuity over all land acquired, in whole or in part, with fund proceeds. This conveyance shall occur simultaneously with the conveyance of the property to



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

the applicant. The conservation easement shall meet the requirements of KRS 382.800 through 382.860 and ensure that lands acquired are maintained in perpetuity for the purposes set out in KRS 146.560.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 12, 2012

FILED WITH LRC: September 13, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012 at 10:00 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing October 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 October 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information on the acquisition of land purchased with fund money and also provides information on the how the funds will be transferred as well as information related to deed restrictions and conservation easements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.560(2) directs the Board to promulgate administrative regulations deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by governing the acquisition of lands purchased in whole or in part with fund money.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation add information on appropriate deed restriction language and information on conservation easements.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to add information on appropriate deed restriction language and information on conservation easements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments relate to language that should be used concerning deed restrictions and information related to conservation easements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment adds language to aid state agencies in the appropriate language for use on deed restrictions as well as the requirement for conservation easements.

(3) List the type and number of individuals, businesses, organi-

zations, or state and local governments affected by this administrative regulation: This administrative regulation will impact Kentucky state agencies, colleges and universities, and Kentucky local governments that are interested in applying for grants from the Heritage Land Conservation Fund. There were approximately 20 grants applications for FY 2012.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in questions (3) will be required to use the new deed restriction language and also comply with conservation easements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any additional cost for entities to comply with the amendments to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having the deed restriction language provided for them.

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

(a) Initially: The amendments to this administrative regulation will not require any additional cost to be absorbed by the administrative body.

(b) On a continuing basis: There will be no continuing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded from the Heritage Land Conservation 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 need to increase fees or funding to administer this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? No. All applicants for grant funding will be treated equally.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Technical and Administrative Support, the Heritage Land Conservation Fund Board and those agencies listed in KRS 146.570(4).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.550 through 146.570.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue for use by the cabinet on a continuing basis.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs associated with this amendment on a continuing basis.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): NA  
Expenditures (+/-): NA  
Other Explanation: NA

**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Technical and Administrative Support  
(Amendment)**

**418 KAR 1:060. Management.**

RELATES TO: KRS 146.550-146.570

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants. This administrative regulation establishes the procedures for management of land acquired with fund money.

Section 1. Purpose. Each recipient of fund money shall maintain in perpetuity for the purposes set forth in KRS 146.560 land acquired with fund money. Management practices shall also meet the requirements of KRS 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth, the application, any memorandum of agreement between the board and the recipient of fund money, any conservation easement or land use restrictions pertaining[which pertains] to the project site, and the most recent RMP approved by the board.

Section 2. Preliminary RMP. ~~[(1)]~~ An applicant for fund money shall submit to the board a preliminary RMP simultaneously with an application submitted pursuant to 418 KAR 1:030 or 1:040. The applicant shall follow the preliminary RMP instructions incorporated by reference in 418 KAR 1:040, Section 6, as HL-1(b) and ~~(c)]~~Section 16 of this administrative regulation.

(2) The preliminary RMP shall include at least the following information:

- (a) The purpose for which the project site will be acquired and managed;
- (b) A description of the management activities that will occur on the project site, including those related to natural resource protection, resource restoration and enhancement, archeological and historical resource protection, security, safety, and maintenance of the project site;
- (c) An explanation of how the management activities will further the purpose of the project site;
- (d) A description of physical improvements, existing and proposed, at the project site, and an explanation of how these activities will be coordinated with the protection of plant and animal species and communities;
- (e) A description of how public access will be provided;
- (f) A description of all agreements, existing and anticipated, which affect, or may affect, the project site and its use, including, but not limited to, management agreements, leases, easements, and licenses;
- (g) A description of existing and anticipated types of public use and restrictions at the project site; and
- (h) The approximate costs, including staffing costs, and potential funding sources for the items listed in paragraphs (a) through (g) of this subsection].

Section 3. Final RMP. (1) A recipient of fund money shall submit to the board, within two and one-half (2 1/2) years of receipt of funding, a final RMP which is consistent with the preliminary RMP and application, and which meets the requirements of KRS 146.550 through 146.570, this chapter, any memorandum of agreement between the board and the recipient, and any conservation easement which pertains to the project site. The applicant shall follow the final RMP instructions incorporated by reference as Form HL-2 in Section 14[Section 15] of this administrative regula-

tion.

(2) The applicant shall develop the final RMP using the findings contained in biological and archeological inventories. The board may grant an exception to the inventory requirements if the applicant demonstrates that either inventory would be nonproductive considering the conditions at the project site.

~~(3)]~~(2) The final RMP shall include at least the following information:

- (a) A table of contents;
  - (b) General information including the name of the project, the location of the project site, the name, address, and phone number of the property owner and contact persons, a description of natural resources, and historical information relative to site management;
  - (c) The purpose and proposed future use of the project site;
  - (d) An explanation of how commitments made in the application, preliminary RMP, memorandum of agreement and conservation easement are reflected in the management plan;
  - (e) Any biological or archaeological inventories that have been conducted;
  - (f) A monitoring plan to ensure the continued viability of natural communities and endangered, threatened and special concern plant and animal species on the project site;
  - (g) A description of the management activities that will occur on the project site, including those related to natural resource protection, resource restoration and enhancement, archeological and historical resource protection, staffing, security, safety, maintenance of the project site, and coordination of management activities with adjacent landowners and other resource protection agencies;
  - (h) An explanation of how the proposed management activities will further the purpose of the project site;
  - (i) The identification and location of physical improvements, existing and proposed, on a master site plan;
  - (j) A description of how public access will be provided;
  - (k) A description of all agreements, existing and anticipated, which affect, or may affect, the project site and its use, including management agreements, leases, easements, and licenses;
  - (l) A description of existing and anticipated types of public use and restrictions at the project site;
  - (m) An explanation of the procedures that will be utilized to assess progress in achieving the goals set forth in the final RMP;
  - (n) An explanation of the procedures that will be utilized to ensure that the project site is identified by one (1) or more appropriate signs and if the site will be identified on literature or advertising; and
  - (o) The estimated costs of the activities listed in paragraphs (e) through (n) of this subsection.
- (3) An applicant may request that its preliminary RMP serve as the final RMP if the preliminary RMP meets all the requirements of subsection (2) of this section.
- (4) The board shall vote to accept or reject the final RMP. If it is rejected, the board shall identify the deficiencies and notify the applicant of those deficiencies. The applicant shall correct these deficiencies within sixty (60) days of notification from the board or other time deadline approved by the board.

Section 4. Land acquired, in whole or in part, with money from the fund shall be managed in[strict] accordance with the most recent RMP approved by the board.

Section 5. Amendment of RMPs. RMPs may be amended only upon prior written board approval. Until board approval of an amendment is obtained, the recipient of fund money shall adhere[strictly] to the most recent RMP approved by the board.

Section 6. Management Agreements. A recipient of fund money may, with prior approval of the board, enter into agreements with third parties for management of land. Despite the terms of any management agreement, the recipient of fund money retains full responsibility for management of the land in accordance with the requirements of KRS 146.550 through 146.570, this chapter,[any other applicable laws of the Commonwealth of Kentucky,] any memorandum of agreement between the board and the recipient, any conservation easement or deed restriction pertaining[which pertains] to the project site, and the most recent RMP approved by

the board.

Section 7. Time Limits. Money initially approved by the board for management shall be expended within two and one-half (2 1/2) years of the board's approval of the Final RMP~~[receipt of funds from the board]~~. An extension may be granted by the board upon receipt of a written request for extension, including an explanation of and reason for the request.

Section 8. Application for Additional Management Funds. (1) The board may, at its discretion, grant written requests for additional management money.

(2) The board shall consider the following factors in its evaluation of requests for additional management money:

- (a) The applicant's past management record;
- (b) The applicant's need for additional management funds; and
- (c) Funds available.

~~Section 9. Verification. Recipients of fund money shall provide to the board, within three (3) years of land acquisition or six (6) months of expenditure of funds, whichever comes first, verification of money expended on land management.~~

~~Section 10.] Joint RMPs. Applicants may submit joint RMPs which specify which entity will perform each aspect of management. Each applicant shall remain responsible for all aspects of management.~~

Section 10[11]. Reports. (1) Recipients of fund money shall submit to the board Annual Management Reports using Form HL-2(c), which is incorporated by reference in this administrative regulation~~[management reports]~~ detailing:

- (a) The status of the project;
- (b) The applicant's compliance with the most recent RMP approved by the board; and
- (c) The status of any final RMP that has yet to be submitted to, or approved by, the board.

(2) Management reports shall be submitted annually~~[until the final RMP has received board approval. Following approval of the final RMP, additional management reports shall be submitted upon request of the board]~~. State agency reports are due on or before the date of the first board meeting of the year. Local government and state college and university reports are due on or before the date of the third board meeting of the year.

~~Section 11. Verification. Recipients of fund money shall provide to the board, along with their annual report, verification of money expended on land management.~~

~~Section 12. [Right of Entry. Recipients of fund money shall permit members or agents of the board to enter, at any reasonable time, with or without notice, property purchased, in whole or in part, with fund money to ensure that the property is being managed in accordance with KRS 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth, the application, any memorandum of agreement between the board and the recipient, any conservation easement that pertains to the project site, and the most recent RMP approved by the board.~~

~~Section 13.] Transfer or Encumbrance of Land. Recipients of fund money shall not, without prior board approval, sell, give, devise, or otherwise convey or encumber land acquired, in whole or in part, with fund money.~~

Section 13[14]. Identification. The project site shall be identified by one (1) or more signs, and literature or advertising, where appropriate, shall also identify the site as having been purchased with money from the fund.

Section 14[15]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Final Resource Management Plan Instructions (July 2012), Form Number HL-2(a)";
- (b) "Final Resource Management Plan (July 2012), Form

Number HL-2(b)"; and

(c) "Annual Management Report (July 2012), Form Number HL-2(c)". [(a) "Preliminary Resource Management Plan Instructions (January 1999), Form Number HL-2". (b) "Final Resource Management Plan Instructions (January 1999), Form Number HL-3".]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Heritage Land Conservation Fund, 375 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 12, 2012

FILED WITH LRC: September 13, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012 at 10:00 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing October 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 October 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for management of land acquired with fund money and also provides information on the expectations for a preliminary and final Resource Management Plan.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.560(2) directs the Board to promulgate administrative regulations deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. This administrative regulation establishes the procedures for management of land acquired with fund money.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing recipients the requirements for managing property purchased with money from the Heritage Land Conservation Fund.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation remove the list of items that are required to be submitted as part of the Preliminary and Final Resource Management Plan (RMP) and instead references the appropriate forms which contain the information.

(b) The necessity of the amendment to this administrative regulation: The information that was listed in the administrative regulation regarding preliminary and final RMPs was also included in the forms required to be submitted. The amendments are necessary to remove the duplicative language.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments remove duplicative material that

is already contained in the required forms.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by removing duplicative material that is already contained in the required forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact Kentucky state agencies, colleges and universities, and Kentucky local governments that are interested in applying for grants from the Heritage Land Conservation Fund. There were approximately 20 grants applications for FY 2012.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in questions (3) will not be required to comply with new procedures. The information that is being removed is duplicative and is being removed to add clarity to the requirements in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any additional cost for entities to comply with the amendments to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having a clear process to follow concerning the submission of the preliminary and final RMPs.

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

(a) Initially: The amendments to this administrative regulation will not require any additional cost to be absorbed by the administrative body.

(b) On a continuing basis: There will be no continuing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded from the Heritage Land Conservation 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 need to increase fees or funding to administer this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? No. All applicants for grant funding will be treated equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Technical and Administrative Support, the Heritage Land Conservation Fund Board and those agencies listed in KRS 146.570(4).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.550 through 146.570.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue for use by the cabinet on a

continuing basis.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs associated with this amendment on a continuing basis.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

#### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Technical and Administrative Support (Amendment)

#### 418 KAR 1:070. Remedies.

RELATES TO: KRS 146.550-146.570

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes the requirements for maintaining land acquired with fund money and enables the board to ensure that fund money is used for acquisition and management, in accordance with KRS 146.560.

Section 1. Forfeiture of Money. (1) Funds approved by the board pursuant to KRS 146.570(4)(f) for land acquisition which, within two (2) years of board approval, is not expended on acquisition of approved land shall revert to the fund. The board may grant an extension upon receipt of a written request.

(2) Money initially approved by the board for management pursuant to KRS 146.570(4)(f) which, within two and one-half (2 1/2) years of receipt of funds from the board, is not expended on management of approved land shall revert to the fund, unless the recipient has requested and received an extension of time. The board may grant an extension upon receipt of a written request.

Section 2. Forfeiture of Land. (1) The board may initiate legal proceedings to forfeit land[Land] acquired with fund money[shall be subject to forfeiture] if any of the following occurs:

(a) Failure to maintain and manage land acquired with fund proceeds for the purposes set forth in KRS 146.560;

(b) Violation of a memorandum of agreement between the board and the recipient of fund money;

(c) Violation of the terms of any conservation easement pertaining[which pertains] to land purchased, in whole or in part, with fund proceeds;

(d) Falsification of information or inaccurate information in the grant application[for a competitive grant or state agency project];

(e) Failure to provide, within ninety (90) days of acquisition, verification of land acquisition and money expended for acquisition;

(f) Falsification of information or inaccurate information in the preliminary or final RMP;

(g) Failure to adhere[strictly] to, or implement, the most recent RMP which has received board approval;

(h) Failure to submit a final RMP to the board[.] within two and one-half (2 1/2) years[.] of receipt of funds from the board;

(i) Expenditure of fund money on anything other than items which have received prior board[.] approval;

(j) Failure to provide verification[., within three (3) years of land acquisition or six (6) months of expenditure of funds, whichever comes first,] of money expended on management of the land, unless the recipient has requested and received an extension of time. The board may grant an extension upon receipt of a written request;

(k)[Failure to permit entry of members or agents of the board

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

pursuant to 418 KAR 1:060, Section 13; (l) Failure to submit reports to the board pursuant to 418 KAR 1:060, Section 12[14];

(l)(m) Any attempt to transfer land in violation of 418 KAR 1:060, Section 14; or

(m)(n) Dissolution of the recipient entity.

(2) Any land forfeited pursuant to this administrative regulation shall be transferred to an appropriate land management entity, as designated by the board. Forfeited land shall continue to be managed in accordance with 418 KAR 1:060, Section 1.

Section 3. Remedies. The board may utilize all remedies available to it by law, including an injunction and restraining order to enforce the provisions of KRS 146.550 through 146.570, this chapter, and any other applicable laws of the Commonwealth of Kentucky; any application submitted to the board; any memorandum of agreement between the board and a recipient of fund money; any conservation easement which pertains to land purchased, in whole or in part, with fund money; and any RMP approved by the board.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 12, 2012

FILED WITH LRC: September 13, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing October 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 October 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator  
#2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email [Michael.Mullins@ky.gov](mailto:Michael.Mullins@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for maintaining land acquired with fund money and enables the Board to ensure that Fund money is used for acquisition and management, in accordance with KRS 146.560.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to enable the Board to ensure that Fund money is used for acquisition and management, in accordance with KRS 146.560.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.560(2) directs the Board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes the procedures for forfeiture of money and land and the remedies available to recover money and land related to the Heritage Land Conservation Fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing procedures for forfeiture of money and land and the remedies available to recover money and land related to the Heritage Land Conservation Fund.

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

(a) How the amendment will change this existing administrative

regulation: The amendments to this administrative regulation provide information related to extension of time for expending money which is to be used for management of properties purchased with Heritage Land Conservation Fund money.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation were necessary to clarify that an extension can delay the reversion of granted funds from the recipient back to the fund.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to KRS 146.560 by clarifying information related to extension requests by recipients of fund money.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assist in the effective administration of the statutes by providing clarity on how extension requests are handled by regarding reimbursements to the heritage Land Conservation Fund.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact Kentucky state agencies, colleges and universities, and Kentucky local governments that are interested in applying for grants from the Heritage Land Conservation Fund. There were approximately 20 grants applications for FY 2012.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in questions (3) will not be required to comply with new procedures. The amendments simply clarify that an extension request, if granted, shall delay the reversion of moneys not spent on the acquisition of lands or management of acquisitioned lands.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any additional cost for entities to comply with the amendments to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having a clear process concerning extension requests.

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

(a) Initially: The amendments to this administrative regulation will not require any additional cost to be absorbed by the administrative body.

(b) On a continuing basis: There will be no continuing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded from the Heritage Land Conservation 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 need to increase fees or funding to administer this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? No. All applicants for grant funding will be treated equally.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Technical and Administrative Support, the Heritage Land Conservation Fund Board and those agencies listed in KRS 146.570(4).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.550 through 146.570.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue for use by the cabinet on a continuing basis.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs associated with this amendment on a continuing basis.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of Health Policy**  
**(Amendment)**

**900 KAR 6:030. Certificate of Need expenditure minimums.**

RELATES TO: KRS 216B.015, 216B.130, 216B.455, 216B.990(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 216B.040(3)(a), 216B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

Section 1. (1) The U.S. Department of Commerce, Bureau of Economic Analysis Price Indexes for Private Fixed Investment by Type shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130.

(2) The change in the price index for the twelve (12) month period ending December 31, 2011[2010], represents a 3.87[an 0.81] percent increase[decrease].

Section 2. (1) The capital expenditure minimum established in KRS 216B.015(8)[216B.015(7)] shall be \$2,750,634[\$2,648,150].

(2) The major medical equipment minimum established in KRS 216B.015(17)[216B.015(16)] shall be \$2,750,634[\$2,648,150].

CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2012

FILED WITH LRC: September 12, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 2012, at 9:00 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by October 15, 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 hear-

ing 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 October 31, 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: Carrie Banahan or Chandra Venettozzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

(b) The necessity of this administrative regulation: KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation adjusts the capital expenditure minimums for capital expenditures and major medical equipment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment of the regulation is in compliance with KRS 216B.130.

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

(a) How the amendment will change this existing administrative regulation: The amendment will provide for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

(b) The necessity of the amendment to this administrative regulation: KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.130 which requires that capital minimums be adjusted.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the most current capital and major medical equipment expenditure amounts use in processing Certificate of Need Applications.

(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 health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities. Approximately 160 applications for Certificate of Need are received annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The modifications will impact any Certificate of Need Applicant with a capital expenditure of major medical expenditure that exceeds the minimum.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The facilities will have access to the most current information regarding capital expenditure and major medical expenditure minimums when completing their applications for Certificate of Need.

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



- (a) Initially: No cost.
- (b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

(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 does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Office of Health Policy within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have no impact on the expenditures or revenues of the Office of Health Policy.

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

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

(c) How much will it cost to administer this program for the first year? In the first year the administrative regulation will not result in a cost for this program as the program is already operational and funded.

(d) How much will it cost to administer this program for subsequent years? In the subsequent years the administrative regulation will not result in a cost for this program as the program is already operational and funded.

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

#### 900 KAR 6:075. Certificate of Need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.095, 216B.455, 216B.990  
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to

promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

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

(2) "Cabinet" is defined by KRS 216B.015(5).

(3) [(2)] "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

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

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

(6) [(5)] "Nonsubstantive review" is defined by KRS 216B.015(17).

(7) [(6)] "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(8) [(7)] "Public notice" means notice given through:

- (a) Public information channels; or
- (b) The cabinet's Certificate of Need Newsletter.

(9) [(8)] "Therapeutic cardiac catheterization outcomes" means in hospital mortality rates, door to balloon time, door to balloon time less than or equal to ninety (90) minutes, Percutaneous Coronary Intervention (PCI) related cardiac arrests and emergency open heart surgeries performed as a result of the PCI.

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

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

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

2. The change of location is for a psychiatric residential treatment facility.

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

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

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

(b) The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;

(c) The proposal involves an application to relocate or transfer licensed acute care beds, not including neonatal Level III beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district and the requirements established in this paragraph are met.

1.a. There shall not be an increase in the total number of licensed acute care beds in that area development district; and

b. The hospital from which the beds are relocated delicenss those beds.

2. If neonatal Level II beds are relocated or transferred pursuant to this paragraph:

a. The receiving hospital shall have an existing licensed Level II or Level III neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds

represent all of its neonatal Level II beds;

(d) The proposal involves an application by an existing licensed hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Convert and implement the beds on-site at the hospital's existing licensed facility; and

3. Delicense the same number of psychiatric or chemical dependency beds that are converted;

(e) The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Convert and implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds;

(f) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds between certificate of need approved nursing facilities or from a certificate of need approved nursing facility to a proposed nursing facility and the requirements established in this paragraph are met.

1. The selling or transferring facility has a certificate of need nursing facility bed inventory of at least 250 beds;

2. The transfer or relocation takes place within the same Area Development District;

3. The application includes:

a. A properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055; and

b. Evidence of the selling or transferring entity's binding commitment to sell or transfer upon approval of the application; and

4. A certificate of need approved nursing facility shall not sell or transfer more than fifty (50) percent of its certificate of need approved nursing facility beds;

(g) The proposal involves an application to establish a therapeutic cardiac catheterization program and the requirements established in this paragraph are met.

1. The applicant is an acute care hospital which was previously granted a certificate of need to participate in a primary angioplasty pilot project and was evaluated after the first two (2) years of operation by an independent consultant who determined the hospital successfully demonstrated good therapeutic cardiac catheterization outcomes.

2. The applicant shall document that the nursing and technical catheterization laboratory staff are experienced and participate in a continuous call schedule.

3. The applicant shall document that the catheterization laboratory shall be equipped with optimal imaging systems, resuscitative equipment, and intra-aortic balloon pump support.

4. The applicant shall document that the cardiac care unit nurses shall be proficient in hemodynamic monitoring and intra-aortic balloon pump management.

5. The applicant shall document formalized written protocols in place for immediate and efficient transfer of patients to an existing licensed cardiac surgical facility.

6. The applicant shall utilize a Digital Imaging and Communications in Medicine (DICOM) standard image transfer system between the hospital and the backup surgical facility.

7. The applicant shall employ an interventional program director who has performed more than 500 primary PCI procedures and who is board certified by the American Board of Internal Medicine in interventional cardiology.

8. The applicant shall document that each cardiologist performing the therapeutic catheterizations shall perform at least seventy-five (75) PCIs per year.

9. The applicant shall document the ability to perform at least 200 interventions per year, with ideal minimum of 400 interventions per year by the end of the second year of operation.

10. The applicant shall participate in the American College of Cardiology National Cardiovascular Data Registry quality measurement program.

11. The applicant shall report therapeutic cardiac catheteriza-

tion data annually to the Cabinet for Health and Family Services.

12. The application shall document the applicant's ability to produce therapeutic cardiac catheterization outcomes which are within two (2) standard deviations of the national means for the first two (2) consecutive years; [or]

(h) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds from one (1) long-term care facility to another long-term care facility and the requirements established in this paragraph are met.

1. The selling or transferring facility fails to meet regulations promulgated by the Centers for Medicare and Medicaid Services at 42 C.F.R. 483.70(a)(8) requiring nursing facilities to install sprinkler systems throughout their buildings;

2. The selling or transferring facility may sell or transfer portions of its total bed component to one (1) or more existing nursing facility;

3. The facility acquiring the beds shall be located in a county contiguous to that of the selling or transferring facility;

4. The selling or transferring facility shall be licensed only for nursing facility beds at the time of transfer or application to transfer and shall not sell or transfer more than thirty (30) of its licensed nursing facility beds to an individual facility; and

5. The application shall include a properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055;

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

1. The termination of voluntary closure of the former healthcare service or facility:

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

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

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

d. Was not an express condition of any subsequent Certificate of Need approval;

2. The proposed healthcare service shall be provided within the same geographic service area as the former healthcare service;

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

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

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

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

(3) If an application is denied nonsubstantive review status by the Office of Health Policy, the application shall automatically be placed in the formal review process.

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

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

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

(c) Nonsubstantive review applications shall not be comparatively reviewed but may be consolidated for hearing purposes.



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(6) If an application for certificate of need is granted nonsubstantive review status by the Office of Health Policy, there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status by the Office of Health Policy shall not be reviewed for consistency with the State Health Plan.

(7) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Health Policy shall approve each application for a certificate of need that has been granted nonsubstantive review status if:

(a) The application does not propose a capital expenditure; or

(b) The application does propose a capital expenditure, and the Office of Health Policy finds the facility or service with respect to which the capital expenditure proposed is needed, unless the cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

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

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

(b) Presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

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

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

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

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

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

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 13, 2012

FILED WITH LRC: August 23, 2012 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on October 22, 2012, at 9:00 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by October 15, 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 cancelled. 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 October 31, 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 40621, phone (502) 564-7905, fax (502) 564-7573.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines and considerations for nonsubstantive review of applications for the certificate of need program.

(b) The necessity of this administrative regulation: This admin-

istrative regulation is necessary to comply with the content of the authorizing statute, KRS 194A.030, 194A.050, 216B.040(2)(a)1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the considerations for nonsubstantive review of certificate of need applications.

(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 KRS 194A.030, 194A.050, 216B.040(2)(a)1 by establishing the considerations for nonsubstantive review of certificate of need applications.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds language to grant nonsubstantive review status to Certificate of Need applications for ambulatory surgical centers owned by physicians filed pursuant to KRS 216B.095(7), proposed ambulatory surgery centers that will utilize the surgery facility of an existing licensed facility and re-establishment of a licensed healthcare facility or service.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add language related to physician owned ambulatory surgical centers as a result of the passage of HB 458 in the 2012 Regular Session of the General Assembly. This legislation was signed by the Governor on April 11, 2012.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 194A.030, 194A.050, 216B.040(2)(a)1, and KRS 216B.095 by establishing the considerations for nonsubstantive review of certificate of need applications.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow applications submitted by physician owned ambulatory surgical centers, meeting KRS 216B.095 (7) requirements, ambulatory surgery centers providing free services, and previously licensed healthcare facilities seeking re-establishment to be granted nonsubstantive review for a certificate of need.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a certificate of need application. Approximately 100 entities file a certificate of need application each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the considerations for nonsubstantive review of certificate of need applications set forth in the administrative regulation are currently established and operational, no new action will be required of regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the considerations for nonsubstantive review of certificate of need applications set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide potential health care providers with a mechanism to establish health care facilities and services under non-substantive review.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this

administrative regulation.

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

(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 does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services as well as the Office of Health Policy within the Cabinet for Health and Family Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030, 194A.050, 216B.040(2)(a)1.

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

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

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

(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 (+/-): None

Expenditures (+/-): None

Other Explanation: None

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Office of Health Policy (Amendment)

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

RELATES TO: KRS 216B.010, 216B.020(2)(a), 216B.040  
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements for registration of Magnetic Resonance Imaging units and the requirements for submission of annual survey data that are used to produce annual reports necessary for the orderly administration of

the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Days" means calendar days, unless otherwise specified.

(3) "Exempt physicians" means physicians that operate a Magnetic Resonance Imaging unit pursuant to the exemption allowed in KRS 216B.020(2)(a).

(4) "Long term care facility" means any entity with licensed long term care beds including nursing facility, nursing home, intermediate care, Alzheimer's, intermediate care facility for the mentally retarded, or personal care.

(5) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(6) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(7) "Year" means a calendar year from January 1 through December 31.

Section 2. Entities Completing Surveys. The following entities shall submit annual surveys:

(1) Licensed Ambulatory Surgery Centers;

(2) Licensed Hospitals performing ambulatory surgery services or performing outpatient surgical services;

(3) Licensed Home Health Agencies;

(4) Licensed Hospice Agencies;

(5) Licensed Hospitals;

(6) Licensed Private Duty Nursing Agencies;

(7) Facilities with licensed long term care beds;

(8) Entities that hold a certificate of need for MRI equipment;

(9) Facilities with Megavoltage Radiation equipment;

(10) Licensed Psychiatric Residential Treatment Facilities; and

(11) Facilities with Positron Emission Tomography equipment.

Section 3. Entities Completing Surveys on a Voluntary Basis. Exempt physicians that have MRI equipment may submit surveys on a voluntary basis.

Section 4. Annual Survey Submission. Entities Completing Surveys on a Voluntary Basis. Exempt physicians that have MRI equipment shall submit surveys on a voluntary basis. An annual survey shall be completed for the previous year and transmitted electronically by accessing the Office of Health Policy's Web site at <https://prd.chfs.ky.gov/OHPSurvey/> [<http://chfs.ky.gov/ohp>].

Section 5. Surveys shall be submitted annually as follows:

(1) Kentucky Health Survey Registry 2012 Ambulatory Surgery [Annual Survey of Licensed Ambulatory Surgical Services];

(2) Kentucky Health Survey Registry 2012 Home Health [Annual Survey of Licensed Home Health Services];

(3) Kentucky Health Survey Registry 2012 Hospice [Annual Survey of Hospice Providers];

(4) Kentucky Health Survey Registry 2012 Hospital [Annual Survey of Licensed Hospitals];

(5) Kentucky Health Survey Registry 2012 Private Duty Nurs- [Annual Survey of Licensed Private Duty Nursing Agencies];

(6) Kentucky Health Survey Registry 2012 Long Term [Annual Survey of Long Term Care Facilities];

(7) Kentucky Health Survey Registry 2012 Magnetic Resonance Imaging [Annual Survey of Magnetic Resonance Imaging (MRI) Equipment and Services];

(8) Kentucky Health Survey Registry 2012 Megavoltage Radiation (Linear Accelerator) [Annual Survey of Megavoltage Radiation Services];

(9) Kentucky Health Survey Registry 2012 Psychiatric Residential Treatment Facility [Annual Survey of Psychiatric Residential Treatment Facilities]; and

(10) Kentucky Health Survey Registry 2012 Positron Emission Tomography [Annual Survey of Positron Emission Tomography (PET) Services].

Section 6. Annual surveys shall be completed and submitted

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

no later than March 15th of each year. If the 15th falls on a weekend or holiday, the submission due date shall be the next working day.

Section 7. Extensions for Survey Submission. (1) A request for an extension for submission of data shall be made in writing or via email to the administrator of the specific survey.

(2) The request for an extension shall state the facility name, survey log-in identification number, contact person, contact phone number, contact email address, and a detailed reason for the requested extension.

(3) One (1) extension per survey of up to ten (10) days shall be granted.

(4) An additional extension shall only be granted if circumstances beyond the entity's control prevents timely completion of a survey.

Section 8. Data Corrections to Draft Annual Reports Utilizing Data Submitted in the Annual Surveys. (1)(a) Prior to the release of draft reports to facilities for their review, the Office of Health Policy shall review data for completeness and accuracy.

(b) If an error is identified, the facility shall be contacted by the Office of Health Policy and allowed fourteen (14) days to make corrections.

(2)(a) Prior to publication of the reports, the Office of Health Policy shall publish draft reports available only to the entities included in each individual report.

(b) The facilities shall be notified of a website and provided with a login identification and password required to access each applicable draft report and shall have fourteen (14) days to review their data for errors.

(c) Corrections shall be submitted in writing or via email to the Office of Health Policy before the expiration of the fourteen (14) day review period.

(3)(a) After publication of the reports, reports shall not be revised as a result of data reported to the Office of Health Policy incorrectly by the facility.

(b) Corrections received after the fourteen (14) day review period shall not be reflected in the published report.

(c) Facilities may provide a note in the comments section for the following year's report, referencing the mistake from the previous year.

Section 9. Annual Reports. (1) Utilizing data submitted in the annual surveys, the Office of Health Policy shall publish reports annually as follows:

- (a) Kentucky Annual Ambulatory Surgical Services Report;
- (b) Kentucky Annual Home Health Services Report;
- (c) Kentucky Annual Hospice Services Report;
- (d) Kentucky Annual Hospital Utilization and Services Report;
- (e) Kentucky Annual Private Duty Nursing Agency Report;
- (f) Kentucky Annual Long Term Care Services Report;[:]
- (g) Kentucky Annual Magnetic Resonance Imaging Services Report;
- (h) Kentucky Annual Megavoltage Radiation Services Report;
- (i) Kentucky Annual Psychiatric Residential Treatment Facility Report; and
- (j) Kentucky Annual Positron Emission Tomography Report.

(2) Electronic copies of annual reports may be obtained at no cost from the Office of Health Policy's Web site at <http://chfs.ky.gov/ohp>. A paper copy may be obtained for a fee of twenty (20) dollars at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4WE, Frankfort, Kentucky 40621.

Section 10. Any facility, other than an exempt physician that has MRI equipment, that fails to complete a required annual survey shall be referred to the Office of Inspector General for further action which may impact the facility's license renewal as provided for in 902 KAR 20:008, Section 2(6).

Section 11. Magnetic Resonance Imaging Equipment Registration on a Voluntary Basis by Exempt Physicians that have MRI Equipment. (1) An exempt physician who uses a Magnetic Resonance

Imaging unit (MRI) may register the MRI equipment by disclosing the following information by telephone contact and followed up in writing to the Cabinet for Health and Family Services:

(a) Name, address, and telephone number of the facility at which each unit is located or to be utilized;

(b) Identification of designated contact person or authorized agent of each facility;

(c) Make, model, and serial number of each unit;

(d) Date the unit became operational at each site; and

(e) Whether the unit is free-standing or mobile. If the unit is mobile, the submission shall also identify the number of days the unit is operational.

(2) Within thirty (30) days of a change in the facility's address or the addition of another MRI unit as well as the discontinuation of any units, the designated contact person or authorized agent shall notify the Office of Health Policy in writing.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Health Survey Registry 2012 Ambulatory Surgery II", screen prints dated August 23, 2012["2011 Annual Survey of Licensed Ambulatory Surgical Services", revised January 2012];

(b) "Kentucky Health Survey Registry 2012 Home Health II", screen prints dated August 23, 2012["2011 Annual Survey of Licensed Home Health Services", revised January 2012];

(c) "Kentucky Health Survey Registry 2012 Hospice", screen prints dated August 23, 2012["2011 Annual Survey of Hospice Providers", revised January 2012];

(d) "Kentucky Health Survey Registry 2012 Hospital", screen prints dated August 23, 2012["2011 Annual Survey of Licensed Hospitals", revised January 2012];

(e) "Kentucky Health Survey Registry 2012 Private Duty Nursing", screen prints dated August 23, 2012["2011 Annual Survey of Licensed Private Duty Nursing Agencies", revised January 2012];

(f) "Kentucky Health Survey Registry 2012 Long Term Care", screen prints dated August 23, 2012["2011 Annual Survey of Long Term Care Facilities", revised January 2012];

(g) "Kentucky Health Survey Registry 2012 Magnetic Resonance Imaging", screen prints dated August 23, 2012["2011 Annual Survey of Magnetic Resonance Imaging (MRI) Equipment and Services", revised January 2012];

(h) "Kentucky Health Survey Registry 2012 Megavoltage Radiation (Linear Accelerator)", screen prints dated August 23, 2012["2011 Annual Survey of Megavoltage Radiation Services", revised January 2012];

(i) "Kentucky Health Survey Registry 2012 Psychiatric Residential Treatment Facility", screen prints dated August 23, 2012["2011 Annual Survey of Psychiatric Residential Treatment Facilities", revised January 2012]; and

(j) "Kentucky Health Survey Registry 2012 Positron Emission Tomography", screen prints dated August 23, 2012["2011 Annual Survey of Positron Emission Tomography (PET) Services", revised January 2012].

(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 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 11, 2012

FILED WITH LRC: September 12, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 2012, at 9:00 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by October 15, 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 October 31, 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 40621, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for completion of annual surveys with the Office of Health Policy. It also establishes voluntary registration of physician owned Magnetic Resonance Imaging (MRI) units as well as voluntary submission of annual surveys by physicians owning exempt MRI units.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.010, 216B.062, 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.062, 216B.990 by establishing the requirements for completion of annual surveys, the voluntary registration of new Magnetic Resonance Imaging units, and voluntary completion of annual surveys by physician exempt MRI units with the Office of Health Policy for the orderly administration of the Certificate of Need program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216B.010, 216B.062, 216B.990 by establishing the requirements for completion of annual surveys and the voluntary requirement of physician owned MRI units to register new Magnetic Resonance Imaging units or complete annual surveys with the Office of Health Policy.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates by reference the 2012 annual surveys.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the 2012 version of the annual surveys to entities required to submit annual surveys.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by providing the 2012 version of the annual surveys.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the 2012 version of the annual surveys.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity required to submit annual surveys and an entity wishing to voluntarily register a Magnetic Resonance Imaging unit. Approximately 800 entities complete a survey each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the annual survey process and MRI registration process identified in the administrative regulation are already established for all facilities, no action will be required of regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the annual survey process and the registration of MRI

units identified in the administrative regulation are already established, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will now have updated surveys for collection of 2012 data.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. As stated above, the annual survey process and voluntary registration of MRI units identified in the administrative regulation are already used as part of our normal operations, so no additional funding will be required.

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

(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 does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.062, 216B.990.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation includes a \$20 fee for anyone wishing to purchase a paper copy of annual reports. As the reports are available electronically at no cost, the fee is necessary to recoup the agency's printing costs incurred in producing paper reports; therefore, any revenue generated will simply cover the printing costs. There is no net revenue. We anticipate that approximately forty (40) reports will be purchased.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation includes a \$20 fee for anyone wishing to purchase a paper copy of annual reports. As the reports are available electronically at no cost, the fee is necessary to recoup the agency's printing costs incurred in producing paper reports; therefore, any revenue generated will simply cover the printing costs. There is no net revenue. We anticipate that approximately forty (40) reports will be purchased.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):  
Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Healthcare Facilities Management**  
**(Amendment)**

**907 KAR 9:005. Level I and II psychiatric residential treatment facility service and coverage policies[services].**

RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459  
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.160, 42 U.S.C. 1396a-d[EO-2004-726]  
NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, 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 a responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes Medicaid program coverage policies regarding Level I and Level II[provisions relating to coverage of] psychiatric residential treatment facility services.

Section 1. Definitions. (1) "Active treatment" means a covered Level I or II psychiatric residential treatment facility [(PRTF)]service provided:

(a)[Including nursing care, mental health, case coordination, psychiatric therapies, task and skills training] In accordance with an individual plan of care as specified in 42 C.F.R. 441.154; and

(b)[Provided] By an individual employed or contracted by a Level I or II PRTF including a:

1. Psychiatrist;
2. Qualified mental health personnel;
3. Qualified mental health professional;
4. Mental health associate; or
5. Direct care staff person.

(2) "Acute care hospital" is defined by KRS 205.639(1).

(3) "Child with a severe emotional disability" is defined by KRS 200.503(2).

(4)[2. Social worker; or

3. Direct care staff person; and

(e) Which shall not be subcontracted.

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

(5) "Diagnostic and assessment services" means at least one (1) face-to-face specialty evaluation of a recipient's medical, social, and psychiatric status provided by a physician or qualified mental health professional that shall:

(a) Include testing and interviewing;

(b) Be documented and record all contact with the recipient and other interviewed individuals; and

(c) Result in a:

1. Diagnosis code in accordance with 45 C.F.R. 162.1000; and
2. Specific treatment recommendation.

(6) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(7) "Intensive treatment services" means a program:

(a) For a child:

1. With a severe emotional disability; and  
a. A severe and persistent aggressive behavior, intellectual disability, or sexually acting out behavior; or

b. A developmental disability;

2. Who requires a treatment-oriented residential environment; and

3. Between the ages of four (4) to twenty-one (21) years; and

(b) That provides psychiatric and behavioral health services two (2) or more times per week to a child referenced in paragraph

(a) of this subsection:

1. As indicated by the child's psychiatric and behavioral health needs; and

2. In accordance with the child's therapeutic plan of care.

(8) "Interdisciplinary team" means:

(a) For a recipient who is under the age of eighteen (18) years:

1. A parent, legal guardian, or care giver of the recipient;

2. The recipient;

3. A qualified mental health professional; and

4. The staff person, if available, who worked with the recipient during the recipient's most recent placement if the recipient has previously been in a Level I or II PRTF; or

(b) For a recipient who is eighteen (18) years of age or older:

1. The recipient;

2. A qualified mental health professional; and

3. The staff person, if available, who worked with the recipient during the recipient's most recent placement if the recipient has previously been in a Level I or II PRTF.

(9) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(10) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(11)[(3)] "Medicaid payment status" means a circumstance in which:

(a) The person:

1. Is eligible for and receiving Medicaid benefits; and

2. Meets patient status criteria for Level I or II psychiatric residential treatment facility [(PRTF)]services; and

(b) The facility is billing the Medicaid program for services provided to the person.

(12)[(4)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(13) "Mental health associate" is defined by 902 KAR 20:320.

(14) "Physician" is defined by KRS 311.550(12).

(15) "Private psychiatric hospital" is defined by KRS 205.639(2).

(16) "Psychiatric services" means:

(a) An initial psychiatric evaluation of a recipient which shall include:

1. A review of the recipient's:

a. Personal history;

b. Family history;

c. Physical health;

d. Prior treatment; and

e. Current treatment;

2. A mental status examination appropriate to the age of the recipient;

3. A meeting with the family or any designated significant person in the recipient's life;

4. Ordering and reviewing:

a. Laboratory data;

b. Psychological testing results; or

c. Any other ancillary health or mental health examinations;

(b) Development of an initial plan of treatment which shall include:

1. Prescribing and monitoring of psychotropic medications; or

2. Providing and directing therapy to the recipient;

(c) Implementing, assessing, monitoring, or revising the treatment as appropriate to the recipient's psychiatric status;

(d) Providing a subsequent psychiatric evaluation as appropriate to the recipient's psychiatric status; and

(e) Consulting with another physician, an attorney, police, a school, a treatment program, or other organization regarding the recipient's care and treatment.

(17)[shall be:

(a) Provided in accordance with 42 C.F.R. 440.230;

(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(c) Clinically appropriate in terms of amount, scope, and duration based on generally-accepted standards of good medical practice;

(d) Provided for medical reasons rather than primarily for the

convenience of the recipient, caregiver, or the provider;

(e) Provided in the most appropriate location, with regard to generally-accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;

(f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; and

(g) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 U.S.C. 1396d(r) and 42 C.F.R. Part 441 Subpart B for Medicaid-eligible persons under twenty-one (21) years of age.

(5) "Psychiatric residential treatment facility" or "PRTF" is defined by KRS 216B.450(5).

(18) "Qualified mental health personnel" is defined by KRS 216B.450(6).

(19) "Qualified mental health professional" is defined by KRS 216B.450(7).

(20) "State mental hospital" is defined by KRS 205.639(3).

(21) "Treatment plan" means a plan created for the care and treatment of a recipient that:

(a) Is developed in a face-to-face meeting by the recipient's interdisciplinary team;

(b) Describes a comprehensive, coordinated plan of medically necessary behavioral health services that specifies a modality, frequency, intensity, and duration of services sufficient to maintain the recipient in a PRTF setting; and

(c) Identifies:

1. A program of therapies, activities, interventions, or experiences designed to accomplish the plan;

2. A qualified mental health professional, a mental health associate, or qualified mental health personnel who shall manage the continuity of care;

3. Interventions by care givers in the PRTF and school setting that support the recipient's ability to be maintained in a PRTF setting;

4. Behavioral, social, and physical problems with interventions and objective, measurable goals;

5. Discharge criteria for each of the requested services that specifies the:

a. Recipient-specific behavioral indicators for discharge from the service;

b. Expected service level that would be required upon discharge; and

c. Identification of the intended provider to deliver services upon discharge;

6. A crisis action plan that progresses through a continuum of care that is designed to reduce or eliminate the necessity of inpatient services;

7. A plan for:

a. Transition to a lower intensity of services; and

b. Discharge from PRTF services;

8. An individual behavior management plan;

9. A plan for the involvement and visitation of the recipient with the birth family, guardian, or other significant person, unless prohibited by a court, including therapeutic off-site visits pursuant to the treatment plan; and

10. Services and planning, beginning at admission, to facilitate the discharge of the recipient to an identified plan for home-based services or a lower level of care[KRS 216B.450(4)].

Section 2. Provider Participation. (1) In order to participate, or continue to participate, in the Kentucky Medicaid Program, a:

(a) Level I PRTF shall:

1. Have a utilization review plan for each recipient consisting of, at a minimum, a pre-admission certification review submitted via telephone or electronically to the review agency prior to admission of the recipient;

2. Perform and place in each recipient's record:

a. A medical evaluation;

b. A social evaluation; and

c. A psychiatric evaluation;

3. Establish a plan of care for each recipient which shall be placed in the recipient's record;

4. Appoint a utilization review committee which shall:

a. Oversee and implement the utilization review plan; and

b. Evaluate each Medicaid admission and continued stay prior to the expiration of the Medicaid certification period to determine if the admission or stay is or remains medically necessary;

5. PRTF shall:

(a) Have a utilization review plan which complies with 907 KAR 10:016;

(b) Appoint a utilization review committee which complies with 907 KAR 10:016 to:

1. Oversee and implement the utilization review plan; and

2. Evaluate each Medicaid admission prior to the expiration of the Medicaid certification period to determine the admission's compliance with medical necessity criteria and other applicable Medicaid requirements;

(e) Comply with staffing requirements established in 902 KAR 20:320;

6. (d) Be located in the Commonwealth[state] of Kentucky;

7. (e) Maintain accreditation by the Joint Commission on Accreditation of Health Care Organizations [JCAHO] or the Council on Accreditation of Services for Families and Children or any other accrediting body with comparable standards that is recognized by the state; and

8. (f) Comply with all conditions of Medicaid provider participation established in 907 KAR 1:671 and 907 KAR 1:672.

(b) A Level II PRTF shall:

1. Have a utilization review plan for each recipient;

2. Establish a utilization review process which shall evaluate each Medicaid admission and continued stay prior to the expiration of the Medicaid certification period to determine if the admission or stay is or remains medically necessary;

3. Comply with staffing requirements established in 902 KAR 20:320;

4. Be located in the Commonwealth of Kentucky;

5. Maintain accreditation by the Joint Commission on Accreditation of Health Care Organizations or the Council on Accreditation of Services for Families and Children or any other accrediting body with comparable standards that is recognized by the state;

6. Comply with all conditions of Medicaid provider participation established in 907 KAR 1:671 and 907 KAR 1:672;

7. Perform and place in each recipient's record a:

a. Medical evaluation;

b. Social evaluation; and

c. Psychiatric evaluation; and

8. Establish a plan of care for each recipient which shall:

a. Address in detail the intensive treatment services to be provided to the recipient; and

b. Be placed in the recipient's record.

(2) A pre-admission certification review:

(a) For a Level I PRTF shall:

1. Contain:

a. The recipient's valid Medicaid identification number;

b. A valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 44.152 and 44.153 for patients age twenty-one (21) and under;

c. A DMS-IV R diagnosis on all five (5) axes, except that failure to record an axis IV and V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level I PRTF treatment;

d. A description of the initial treatment plan relating to the admitting symptoms;

e. Current symptoms requiring inpatient treatment;

f. Information to support the medical necessity and clinical appropriateness of the services or benefits of the admission to a Level I PRTF in accordance with 907 KAR 3:130;

g. Medication history;

h. Prior hospitalization;

i. Prior alternative treatment;

j. Appropriate medical, social, and family histories; and

k. Proposed aftercare placement;

2. Remain in effect for the days certified by the review agency; and

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

3. Be completed within thirty (30) days; or

(b) For a Level II PRTF for a non emergent admission shall:

1. Contain:

a. The recipient's valid Medicaid identification number;

b. A valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 44.152 and 441.153 for patients age twenty-one (21) and under;

c. A DSM-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV and V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level II PRTF treatment;

d. A description of the initial treatment plan relating to the admitting symptoms;

e. Current symptoms requiring inpatient treatment;

f. Information to support the medical necessity and clinical appropriateness of the services or benefits of the admission to a Level II PRTF in accordance with 907 KAR 3:130;

g. Medication history;

h. Prior hospitalization;

i. Prior alternative treatment;

j. Appropriate medical, social, and family histories; and

k. Proposed aftercare placement;

2. Remain in effect for the days certified by the review agency;

and

3. Be completed within thirty (30) days.

(3) Failure to admit a recipient within the recipient's certification period shall

require a new pre-admission review certification request.

(4) A utilization review plan for an emergency admission to a Level II PRTF shall contain:

(a) A completed MAP 570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-One (21);

1. Completed by the facility's interdisciplinary team; and

2. Placed in the recipient's medical record;

(b) Documentation, provided by telephone or electronically to the review agency within two (2) days of the recipient's emergency admission, justifying:

1. The recipient's emergency admission;

2. That ambulatory care resources in the recipient's community and placement in a Level I PRTF do not meet the recipient's needs;

3. That proper treatment of the recipient's psychiatric condition requires services provided by a Level II PRTF under the direction of a physician; and

4. That the services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services are no longer needed;

(c) The recipient's valid Medicaid identification number;

(d) A valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 441.152 and 441.153 for recipients age twenty-one (21) and under;

(e) A DMS-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV and V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level II PRTF treatment;

(f) 1. A description of the initial treatment plan relating to the admitting symptom; and

2. The initial treatment plan shall provide a full description of the intensive treatment services to be provided to the recipient;

(g) Current symptoms requiring residential treatment;

(h) Medication history;

(i) Prior hospitalization;

(j) Prior alternative treatment;

(k) Appropriate medical, social, and family histories; and

(l) Proposed aftercare placement.

(5)(2) A PRTF shall establish procedures and processes for review, evaluation and individual plan of care development in accordance with 907 KAR 1:016.

(3) For an elective admission of a recipient, an independent

team shall, within a period not more than thirty (30) days prior to the admission, complete and sign a MAP 569, Certification of Need form in accordance with 42 C.F.R. 441.152 and 42 C.F.R. 441.153, and the form shall be placed in the recipient's medical record to verify compliance with this requirement.

(4) For an emergency admission of a recipient, a PRTF's interdisciplinary team shall complete a MAP 570, Medicaid Certification of Need for Inpatient Psychiatric Services for individuals under age twenty-one (21), and the form shall be placed in the recipient's medical record.

(5) For an individual who becomes Medicaid eligible after admission, a Level I or II PRTF's interdisciplinary team shall complete a MAP 570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-One (21), and the form shall be placed in the recipient's medical record.

(6) For a recipient, a Level I or II PRTF shall maintain medical records that shall:

(a) Be;

1. Current;

2. Readily retrievable;

3. Organized;

4. Complete; and

5. Legible;

(b) Reflect sound medical recordkeeping practice in accordance with:

1. 902 KAR 20:320;

2. KRS 194A.060;

3. KRS 434.840 through 434.860;

4. KRS 422.317; and

5. 42 C.F.R. 431 Subpart F;

(c) Document the need for admission and appropriate utilization of services;[current, readily retrievable, organized, complete, legible and shall reflect sound medical recordkeeping practice, in accordance with 902 KAR 20:320, KRS 194A.060, 434.840-860, 422.317 and 42 C.F.R. 431 Subpart F;

(b) Document the need for admission and appropriate utilization of services;

(c) Show that the recipient was receiving intensive treatment services in accordance with 907 KAR 1:016;]

(d) Be maintained [in an organized central file], including information regarding payments claimed, for a minimum of six (6)[five (5)] years or until an audit dispute or issue is resolved, whichever is longer; and

(e) Be made available for inspection or[er] copying or provided to the following upon request:

1. A representative of the United States Department for Health and Human Services or its designee;

2. The United States Office of the Attorney General or its designee;

3. The Commonwealth of Kentucky, Office of the Attorney General or its designee;

4. The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designee;

5. The Commonwealth of Kentucky, Cabinet for Health and Family Services, Office of the Inspector General or its designee;[or]

6. The department; or

7. A managed care organization with whom the department has contracted.

Section 3. Covered Admissions. A covered admission for a:

(1) Level I PRTF:

(a) Shall be:

1. Prior authorized; and

2. Reimbursed pursuant to 907 KAR 9:010; and

(b) 1. Shall be limited to those for a child age six (6) through twenty (20) years of age who meets Medicaid payment status criteria; or

2. May continue based on medical necessity, for a recipient who is receiving active treatment in a Level I PRTF on the recipient's 21st birthday if the recipient has not reached his or her 22nd birthday.

(2) Level II PRTF shall be:

(a) Prior authorized;

(b) Limited to those for a child;

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

1.a. Age four (4) through twenty-one (21) years who meets Medicaid payment status criteria; and

b. Whose coverage may continue, based on medical necessity, if the recipient is receiving active treatment in a Level II PRTF on the recipient's 21st birthday and the recipient has not reached his or her 22nd birthday;

2. With a severe emotional disability in addition to severe and persistent aggressive behaviors, intellectual disability, sexually acting out behaviors, or a developmental disability; and

3.a. Who does not meet the medical necessity criteria for an acute care hospital, private psychiatric hospital, or state mental hospital; and

b. Whose treatment needs cannot be met in an ambulatory care setting, Level I PRTF, or in any other less restrictive environment; and

(c) Reimbursed pursuant to 907 KAR 9:010.

Section 4. PRTF Covered Services and Coverage Criteria. (1) To be covered by the department:

(a) The following services shall be prior authorized and meet the requirements established in paragraph (b) of this subsection:

1. Diagnostic and assessment services;

2. Treatment plan development;

3. Psychiatric services;

4. Nursing services which shall be provided in compliance with 902 KAR 20:320;

5. Medication which shall be provided in compliance with 907 KAR 1:019;

6. Evidence-based treatment interventions;

7. Individual therapy which shall comply with 902 KAR 20:320;

8. Family therapy which shall comply with 902 KAR 20:320;

9. Group therapy which shall comply with 902 KAR 20:320;

10. Individual and group interventions that shall focus on additional and harmful use or abuse issues and relapse prevention if indicated;

11. Substance abuse education which shall comply with 902 KAR 20:320;

12. Activities that:

a. Support the development of an age-appropriate daily living skill including positive behavior management or support; or

b. Support and encourage the parent's ability to re-integrate the child into the home;

13. Crisis intervention which shall comply with:

a. 42 C.F.R. 483.350 through 483.376; and

b. 902 KAR 20:320;

14. Consultation with other professionals including case managers, primary care professionals, community support workers, school staff, or others;

15. Educational activities; or

16. Nonmedical transportation services as needed to accomplish objectives;

(b) A Level I PRTF service listed in paragraph (a) of this subsection shall be:

1. Provided under the direction of a physician;

2. Described in the recipient's current treatment plan;

3. Provided at least once per week, except for diagnostic and assessment services which shall have no weekly minimum requirement;

4. Medically necessary; and

5. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c) A Level I PRTF service listed in paragraph (a)7, 8, 9, 11, or 13 of this subsection shall be provided by a qualified mental health professional; or

(d) A Level II PRTF service listed in paragraph (a) of this subsection shall be:

1. Provided under the direction of a physician;

2. Described in the recipient's current treatment plan;

3. Provided at least once a week;

a. Unless the service is necessary twice a week, in which case the service shall be provided at least twice a week; or

b. Except for diagnostic and assessment services which shall have no weekly minimum requirement;

4. Medically necessary; and

5. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

(2) A Level II PRTF service listed in subsection (1)(a)7, 8, 9, 11, or 13 of this section shall be provided by a qualified mental health professional.

Section 5. Determining Patient Status. (1) The department shall review and evaluate the health status and care needs of a recipient in need of Level I or II PRTF care using the criteria identified in 907 KAR 3:130 to determine if a service or benefit is clinically appropriate.

(2) The care needs of a recipient shall meet the patient status criteria for:

(a) Level I PRTF care if the recipient requires:

1. Long term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF than in a psychiatric hospital; and

2. Level I PRTF services on a continuous basis as a result of a severe mental or psychiatric illness, including a severe emotional disturbance; or

(b) Level II PRTF care if the recipient:

1. Is a child with a severe emotional disability;

2. Requires long term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF than a psychiatric hospital;

3. Requires Level II PRTF services on a continuous basis as a result of a severe emotional disability in addition to a severe and persistent aggressive behavior, an intellectual disability, a sexually acting out behavior, or a developmental disability; and

4. Does not meet the medical necessity criteria for an acute care hospital or a psychiatric hospital and has treatment needs which cannot be met in an ambulatory care setting, Level I PRTF, or other less restrictive environment.

Section 6. Durational Limit, Re-evaluation, and Continued Stay. (1) A recipient's stay, including the duration of the stay, in a Level I or II PRTF shall be subject to the department's approval.

(2)(a) A recipient in a Level I PRTF shall be re-evaluated at least once every thirty (30) days to determine if the recipient continues to meet Level I PRTF patient status criteria.

(b) A Level I PRTF shall complete a review of each recipient's treatment plan of care at least once every thirty (30) days.

(c) The review referenced in paragraph (b) of this subsection shall include:

1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;

2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and

3. A statement of justification for the level of services needed including:

a. Suitability for treatment in a less-restrictive environment; and

b. Continued services.

(d) If a recipient no longer meets Level I PRTF patient status criteria, the department shall only reimburse through the last day of the individual's current approved stay.

(3) A Level II PRTF shall complete by no later than the third day following an admission, an initial review of services and treatment provided to a recipient which shall include:

(a) Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;

(b) An assessment of progress toward each treatment plan goal and objective with revisions indicated; and

(c) A statement of justification for the level of services needed including:

1. Suitability for treatment in a less-restrictive environment; and

2. Continued services.

(4)(a) For a recipient aged four (4) to five (5) years, a Level II PRTF shall complete a review of the recipient's treatment plan of care at least once every fourteen (14) days after the initial review referenced in subsection (3) of this section.

(b) The review referenced in paragraph (a) of this subsection shall include:

1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and

3. A statement of justification for the level of services needed including:

- a. Suitability for treatment in a less-restrictive environment; and
- b. Continued services.

(5)(a) For a recipient aged six (6) to twenty-two (22) years, a Level II PRTF shall complete a review of the recipient's treatment plan of care at least once every thirty (30) days after the initial review referenced in subsection (3) of this section.

(b) The review referenced in paragraph (a) of this subsection shall include:

1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;

2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and

3. A statement of justification for the level of services needed including:

- a. Suitability for treatment in a less-restrictive environment; and
- b. Continued services.

Section 7. [shall be:

(1) Preauthorized;

(2) Limited to those for children age six (6) through twenty (20) years of age who meet Medicaid payment status criteria. Coverage may continue, based on medical necessity, for a recipient who is receiving active treatment in a PRTF on his 21st birthday so long as he has not reached his 22nd birthday; and

(3) Reimbursed in accordance with 907 KAR 9:010.

Section 4. Durational Limitations. Recipient stays shall be subject to utilization review by the cabinet.

Section 5. Determining Patient Status. (1) The department shall review and evaluate the health status and care needs of a recipient in need of inpatient psychiatric care using the same standards as established for inpatient psychiatric hospital care in 907 KAR 10:016.

(2) The care needs of a recipient shall meet PRTF patient status criteria only if:

(a) The individual meeting the patient status criteria in 907 KAR 10:016 requires long-term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF rather than a psychiatric hospital; and

(b) The recipient requires PRTF services on a continuous basis as a result of a severe mental or psychiatric illness, including severe emotional disturbances.

Section 6. Reevaluation of Need for Services. Patient status shall be reevaluated for a PRTF recipient at thirty (30) day intervals. If a reevaluation reveals the recipient no longer requires PRTF care, payment shall continue only through the last day for which the stay is certified.

Section 7. Exclusions and Limitations in Coverage. (1) The following shall not be covered as Level I or II PRTF services:

(a) 1. Chemical dependency treatment services if the need for the services is the primary diagnosis of the recipient, except [However,] chemical dependency treatment services shall be covered as incidental treatment if minimal chemical dependency treatment is necessary for successful treatment of the primary diagnosis;

(b) Outpatient services;

(c) Pharmacy services, which shall be covered [as pharmacy services] in accordance with 907 KAR 1:019; [or]

(d) Durable medical equipment, which shall be covered [as a durable medical equipment benefit] in accordance with 907 KAR 1:479;

(e) Hospital emergency room services, which shall be covered in accordance with 907 KAR 10:014;

(f) Acute care hospital inpatient services, which shall be covered in accordance with 907 KAR 10:012;

(g) Laboratory and radiology services, which shall be covered in accordance with 907 KAR 10:014 or 907 KAR 1:028;

(h) Dental services, which shall be covered in accordance with 907 KAR 1:026;

(i) Hearing and vision services, which shall be covered in accordance with 907 KAR 1:038; or

(j) Ambulance services, which shall be covered in accordance with 907 KAR 1:060.

(2) A Level I or II PRTF shall not charge a recipient or responsible party representing a recipient any difference between private and semiprivate room charges.

(3) The department shall not reimburse for Level I or II PRTF services for a recipient [Services shall not be covered] if appropriate alternative services are available for the recipient in the community.

(4) The following shall not qualify as reimbursable in a PRTF setting [for a PRTF service]:

(a) An admission that is not medically necessary;

(b) Services for an individual;

1. With a major medical problem or minor symptoms;

2. [(c) An individual] Who might only require a psychiatric consultation rather than an admission to a PRTF [psychiatric facility]; or

3. [(d) An individual] Who might need only adequate living accommodations, economic aid, or social support services.

Section 8. Reserved Bed Days. (1) The department may cover a bed reserve day for a recipient's absence from a Level I or II PRTF if:

(a) The recipient:

1. Is in Medicaid payment status in a Level I or II PRTF;

2. Has been in the Level I or II PRTF overnight for at least one (1) night;

3. Is reasonably expected to return requiring Level I or II PRTF care; and

4. Has not exceeded the bed reserve day limit established in subsection (2) of this section; and

(b) The Level I or II PRTF's occupancy percent is at least fifty (50) percent.

(2)(a) The annual bed reserve day limit per recipient per Level I or II PRTF shall be five (5) days per calendar year.

(b) The department may allow a recipient to exceed the limit established in paragraph (a) of this subsection, if the department determines that an additional bed reserve day is in the best interest of the recipient.

Section 9. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or

(2) Disapproves the policy. [The department shall cover reserved bed days in accordance with the following specified upper limits and criteria:

(1) Upper limits for reserved beds shall be applied as follows:

(a) A maximum of fourteen (14) days per admission for an acute care hospital stay;

(b) A maximum of fourteen (14) days per calendar year for an admission to a mental hospital or a psychiatric bed of an acute care hospital;

(c) A maximum of twenty-one (21) days per six (6) months during a calendar year for other leaves of absence; and

(d) A maximum of thirty (30) consecutive days for hospital and other leaves of absence combined.

(2) The following criteria shall be met for reserved bed days to be covered:

(a) The recipient shall be in Medicaid payment status in the PRTF and shall have been in the facility at least overnight;

(b) The recipient shall be reasonably expected to return to PRTF level of care;

(c) Due to the demand at the facility for PRTF care, there is likelihood the bed would be occupied by some other patient, if it had not been reserved;

(d) Hospitalization shall be in a Medicaid-participating hospital with the admission

appropriately approved by the department; and

(e) For a leave of absence other than for hospitalization, the

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

recipient's physician orders, and the recipient's plan of care shall provide for, a leave, which may include a leave of absence to visit with relatives and friends.]

Section 10.[9:] Appeal Rights. (1) An appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 11.[40:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21)", revised 5/90; and

(b) "MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-one (21)", revised 5/90.

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

LAWRENCE KISSNER, Commissioner

AUDREY HAYNES, Secretary

APPROVED BY AGENCY: August 9, 2012

FILED WITH LRC: September 4, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 2012, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing October 15, 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 October 31, 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: Jill Hunter or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid coverage policies regarding Level I and II psychiatric residential treatment facility (PRTF) services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid coverage policies regarding Level I and II PRTF services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid coverage policies regarding Level I and II PRTF services.

(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 authorizing statutes by establishing Medicaid coverage policies regarding Level I and II PRTF services.

(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: Previously, Kentucky law established one category of psychiatric residential treatment facility services. In 2010, the Kentucky legislature enacted legislation which created two levels of PRTF services – Level I and II. This amendment replaces the coverage policies for the prior lone designation of psychiatric residential treatment facility services with coverage policies for Level I and II PRTF services respectively.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comport with KRS 216B.450.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 216B.450 by establishing Medicaid coverage policies regarding Level I and II PRTF services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 216B.450 by establishing Medicaid coverage policies regarding Level I and II PRTF services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and Level II psychiatric residential treatment facilities will be affected by the amendment. Level I and II PRTF beds are awarded through a certificate of need process. The Office of Certificate of Need has limited the number of Level I PRTF beds statewide to 315 and the number of Level II PRTF beds to 145 statewide. Of the 315 Level I beds, 303 are currently filled and span thirty-three (33) facilities. Of the 145 Level II PRTF beds, 132 are currently filled and among six (6) facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Level I and II PRTFs will have to comply with service 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 imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Participating Level I and II PRTFs will be recognized by the Medicaid program as authorized service providers.

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

(a) Initially: Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

(b) On a continuing basis: Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

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

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

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

administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied as individuals receiving care in a Level II PRTF have more intensive needs than children in a Level I PRTF; thus, some service requirements vary accordingly.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(16), 42 U.S.C. 1396d(h), 42 C.F.R. 441.151 and 42 C.F.R. 440.160.

2. State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.

3. Minimum or uniform standards contained in the federal mandate. Per federal Medicaid law, inpatient psychiatric facility services for individuals under twenty-one (21) is not a mandatory Medicaid benefit, but if a state's state plan includes intermediate care facility services for individuals with mental retardation, it must also cover inpatient psychiatric facility services for individuals under twenty-one (21). Additionally, states may be required to provide inpatient psychiatric care under the early and periodic screening, diagnosis and treatment program (EPSDT).

Pursuant to 42 C.F.R. 440.160, "Inpatient psychiatric services for individuals under age 21" means services that-

(a) Are provided under the direction of a physician;

(b) Are provided by-

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in §441.151 of this subchapter."

Additionally, 42 C.F.R. 441.151 states, "(a) Inpatient psychiatric services for individuals under age 21 must be:

(1) Provided under the direction of a physician;

(2) Provided by—

(i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.

(3) Provided before the individual reaches age 21, or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following-

(i) The date the individual no longer requires the services; or

(ii) The date the individual reaches 22; and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with §441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in §483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 441.151 and 42 C.F.R. 440.160.

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

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

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

(c) How much will it cost to administer this program for the first year? Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

(d) How much will it cost to administer this program for subsequent years? Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Healthcare Facilities Management (Amendment)

#### 907 KAR 9:010. Reimbursement for Level I and II [Payments for] psychiatric residential treatment facility services.

RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459  
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.160, 42 U.S.C. 1396a-d[; EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, 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) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds [for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes Medicaid reimbursement policies for Level I and Level II psychiatric residential treatment facility services provided to a Medicaid recipient who is not enrolled in a managed care organization, [sets forth provisions relating to payments for psychiatric residential treatment facility services.]

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

Section 1. Definition. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(3) "Level I PRTF" means a psychiatric residential treatment facility that meets the

criteria established in KRS 216B.450(5)(a).

(4) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(5) "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(6) "Per diem rate" means a Level I or II PRTF's total, all-inclusive, daily reimbursement as calculated by the department.

(7) "Recipient" is defined by KRS 205.8451(9).

Section 2. Reimbursement for Level I PRTF Services and Costs. (1) To be reimbursable under the Medicaid program, Level I PRTF services and associated costs, respectively, shall be provided to or associated, respectively, with a recipient receiving Level I PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse for Level I PRTF services and costs referenced in subsection (4) of this section for a recipient not enrolled in a managed care organization:

(a) At the lesser of:

1. A per diem rate of \$274.01; or

2. The usual and customary charge; and

(b) An amount not to exceed the prevailing charges, in the locality where the Level I PRTF is located, for comparable services provided under comparable circumstances.

(3) The per diem rate referenced in subsection (2) of this section shall be increased each biennium by 2.22 percent.

(4) The per diem rate referenced in subsection (2) of this section, or usual and customary charge if less than the per diem rate, shall represent total Medicaid reimbursement for Level I PRTF services and costs:

(a) Including all care and treatment costs;

(b) Including costs for all ancillary services;

(c) Including capital costs;

(d) Including room and board costs; and

(e) Excluding the costs of drugs as drugs shall be:

1. Covered in accordance with 907 KAR 1:019; and

2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 1:018.

Section 3. Reimbursement for Level II PRTF Services and Costs. (1) To be reimbursable under the Medicaid program, Level II PRTF services and associated costs, respectively, shall be provided to or associated, respectively, with a recipient receiving Level II PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse a per diem rate as follows for Level II PRTF services and costs for a recipient not enrolled in a managed care organization:

(a) \$345 for a rate group one (1) Level II PRTF;

(b) \$365 for a rate group two (2) Level II PRTF;

(c) \$385 for a rate group three (3) Level II PRTF; or

(d) \$405 for a rate group four (4) Level II PRTF.

(3)(a) A rate group one (1) Level II PRTF shall be a Level II PRTF that serves recipients who are not enrolled in a managed care organization and are:

1. Aged twelve (12) years or younger;

2. Male or female; and

3.a. Sexually reactive; or

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Do not have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient higher than seventy (70).

(b) A rate group two (2) Level II PRTF shall be a Level II PRTF which serves recipients who are not enrolled in a managed care organization and are:

1. Aged twelve (12) years or younger;

2. Male or female; and

3.a. Sexually reactive; and

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Do not have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient higher than seventy (70).

(c) A rate group three (3) Level II PRTF shall be a Level II PRTF which serves recipients who are not enrolled in a managed care organization and are:

1. Aged thirteen (13) years or older;

2. Male or female; and

3.a. Sexually reactive; or

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Do not have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient higher than seventy (70).

(d) A rate group three (3) Level II PRTF shall be a Level II PRTF which serves recipients who are not enrolled in a managed care organization and are:

1. Aged thirteen (13) years or older;

2. Male or female; and

3.a. Sexually reactive; and

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Do not have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient higher than seventy (70).

(e) A rate group four (4) Level II PRTF shall be a Level II PRTF which serves recipients who are not enrolled in a managed care organization and are:

1. Under twenty-two (22) years of age;

2. Male or female; and

3.a. Sexually reactive; or

b. Who:

(i) Have a severe and persistent aggressive behavior;

(ii) Have mental retardation or a developmental disability; and

(iii) Have an intelligence quotient lower than seventy (70).

(4) The per diem rates referenced in subsection (2) of this section, or usual and customary charge if less than the per diem rate, shall represent total Medicaid reimbursement for Level II PRTF services and costs:

(a) Including all care and treatment costs;

(b) Including costs for all ancillary services;

(c) Including capital costs;

(d) Including room and board costs; and

(e) Excluding the costs of drugs as drugs shall be:

1. Covered in accordance with 907 KAR 1:019; and

2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 1:018.

(5) The department shall annually evaluate a per diem rate for Level II PRTF services and costs by reviewing the most recent, reliable claims' data and cost report data to analyze treatment patterns, technology, and other factors that may alter the cost of efficiently providing Level II PRTF services.

Section 4. Cost Reports and Audits. (1) A Level I or II PRTF shall annually submit to the department, within ninety (90) days of the closing date of the facility's fiscal year end, a legible and completed Form CMS 2552-96.

(2) A Form CMS 2552-96 shall be subject to review and audit by the department.

Section 5. Access to Level I and II PRTF Fiscal and Services Records. A Level I or II PRTF shall provide, upon request, all fiscal and service records, to the:

(1) Department;

(2) Cabinet for Health and Family Services, Office of Inspector General;

(3) Commonwealth of Kentucky, Office of the Attorney General;

(4) Commonwealth of Kentucky, Auditor of Public Accounts;

(5) Secretary of the United States Department of Health and Human Services; or

(6) United States Office of the Attorney General.

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

Section 6. Bed Reserve Reimbursement. (1) The department's reimbursement for a bed reserve day which qualifies as a bed reserve day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:

(a) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least ninety-five (95) percent; or

(b) Twenty-five (25) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least fifty (50) percent but less than ninety-five (95) percent.

(2) The department shall not reimburse for a bed reserve day in a Level I or II PRTF if the Level I or II PRTF's occupancy percent is less than fifty (50) percent.

Section 7. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or

(2) Disapproves the policy.

Section 8. Appeals. A provider may appeal a decision by the department regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 9. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse for Level I and II psychiatric residential treatment facility services in accordance with this administrative regulation if the managed care organization so chooses.

(2) The reimbursement policies established in this administrative regulation shall not apply to a managed care organization, except the requirement that a Level I or II PRTF service shall be in accordance with 907 KAR 9:005 in order to be reimbursable under the Medicaid program.

Section 10. Incorporation by Reference. (1) The "Form CMS 2552-96", August 2010 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. through 4:30 p.m. ["Psychiatric residential treatment facility" (PRTF) means an appropriately licensed PRTF participating in the Medicaid Program.

Section 2. Payment Rates. Covered inpatient psychiatric facility services for individuals under twenty-two (22) years of age provided in PRTFs of sixteen (16) beds or less shall be paid for in accordance with the following:

(1) The PRTFs shall be paid a fixed rate of \$230 per diem which shall be adjusted upward each biennium by 2.22 percent, or usual and customary charge if less; however, the payment shall not exceed prevailing charges in the locality for comparable services provided under comparable circumstances.

(2) The fixed rate, or usual and customary charge if less, covers total facility costs for covered PRTF services, excluding the cost of drugs, as follows:

(a) All care and treatment costs;

(b) Costs for all ancillary services, excluding the cost of drugs which shall be reimbursed through the pharmacy program;

(c) Capital costs; and

(d) Room and board costs.

Section 3. Cost Reports and Audits. PRTFs shall file a cost report annually using a uniform cost report form prescribed by the Department for Medicaid Services. The cabinet may audit the cost reports as it deems necessary.

Section 4. Access to PRTF Fiscal and Services Records. Access shall be granted to PRTF fiscal and services records to the extent determined necessary by the cabinet, as follows:

(1) To assure accuracy of the cost report, that services are provided in accordance with the standards shown in this administrative regulation and in 907 KAR 9:005; and

(2) The PRTF is complying with all terms and conditions of the provider agreement between the cabinet and PRTF.

(3) Representatives of the United States Department of Health and Human Services, Inspector General's Office, and Attorney General's Office shall have access to PRTF records to the extent necessary to perform their functions which relate to the Medicaid Program.

Section 5. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after November 1, 1995.]

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 9, 2012

FILED WITH LRC: September 4, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 2012, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing October 15, 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 October 31, 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: Jill Hunter or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid reimbursement policies for Level I and Level II psychiatric residential treatment facility services provided to a Medicaid recipient who is not enrolled in a managed care organization; however, a managed care organization shall be authorized to reimburse for Level I and II psychiatric residential treatment facility services in accordance with this administrative regulation if the managed care organization elects to do so.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid reimbursement policies for Level I and II PRTF services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid reimbursement policies for Level I and II PRTF services.

(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 authorizing statutes by establishing Medicaid reimbursement policies for Level I and II PRTF services.

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

(a) How the amendment will change this existing administrative regulation: The amendment replaces the prior single reimbursement model for PRTF services with a per diem reimbursement methodology tailored to Level I and II PRTF services respectively. The Level I PRTF per diem is the lesser of \$274.01/day or the facility's usual and customary charge/day and is to be increased, for inflation, each biennium by 2.22 percent. Level II PRTF reim-

bursement is tiered with reimbursement increasing as the level of patient care increases. The Level II PRTF per diem rates range from \$345/day to \$405/day and are not adjusted for inflation. The amendment also establishes bed reserve day reimbursement policies.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with legislation (KRS 216B.450 through 457) which created Level I and II psychiatric residential treatment facilities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 216B.450 through 457 by replacing reimbursement for PRTF services with reimbursement for, respectively, Level I and II PRTF services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 216B.450 through 457 by replacing reimbursement for PRTF services with reimbursement for, respectively, Level I and II PRTF services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and Level II psychiatric residential treatment facilities will be affected by the amendment. Level I and II PRTF beds are awarded through a certificate of need process. The Office of Certificate of Need has limited the number of Level I PRTF beds statewide to 315 and the number of Level II PRTF beds to 145 statewide. Of the 315 Level I beds, 303 are currently filled and span thirty-three (33) facilities. Of the 145 Level II PRTF beds, 132 are currently filled and among six (6) facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Level I and II PRTFs will have to continue to submit cost reports annually to the Department for Medicaid Services (DMS).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Participating Level I and II PRTFs will receive reimbursement tailored to care provided to the individuals they serve.

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

(a) Initially: Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

(b) On a continuing basis: Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

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

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

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

amendment to this administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied as reimbursement for Level I PRTFs is less than reimbursement for Level II PRTFs as individuals served by Level II PRTFs require more intensive care than is required for Level I PRTF service recipients.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(16), 42 U.S.C. 1396d(h), 42 C.F.R. 441.151 and 42 C.F.R. 440.160.

2. State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.

3. Minimum or uniform standards contained in the federal mandate. Per federal Medicaid law, inpatient psychiatric facility services for individuals under twenty-one (21) is not a mandatory Medicaid benefit, but if a state's state plan includes intermediate care facility services for individuals with mental retardation, it must also cover inpatient psychiatric facility services for individuals under twenty-one (21.) Additionally, states may be required to provide inpatient psychiatric care under the early and periodic screening, diagnosis and treatment program (EPSDT).

Pursuant to 42 C.F.R. 440.160, "Inpatient psychiatric services for individuals under age 21" means services that—

(a) Are provided under the direction of a physician;

(b) Are provided by—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in §441.151 of this subchapter."

Additionally, 42 C.F.R. 441.151 states, "(a) Inpatient psychiatric services for individuals under age 21 must be:

(1) Provided under the direction of a physician;

(2) Provided by—

(i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.

(3) Provided before the individual reaches age 21, or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—

(i) The date the individual no longer requires the services; or

(ii) The date the individual reaches 22; and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with §441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in §483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

# VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 441.151, 42 C.F.R. 440.160, and this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

(d) How much will it cost to administer this program for subsequent years? Level I and II PRTF services are in the scope of managed care except for any Level I or II PRTF services necessary for an individual who is excluded from managed care enrollment. The Department for Medicaid Services (DMS) does not anticipate many individuals who are excluded from managed care participation needing Level I or II PRTF services; therefore, the anticipated cost to the department is minimal.

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 Mental Health and Mental Retardation Services Division of Administration and Financial Management (Amendment)

#### 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) of this section that is provided.

(2) The per diem rate for room and board for each facility shall be as follows:[follow]

Facility		Rate
Central State Hospital		\$770[\$670]
Bingham Gardens[Central State – ICF/MR]		\$1,370[\$1,185]
Western State Hospital		\$740
Western State Nursing Facility		\$285[\$290]
Outwood ICF/MR		\$565[\$475]
Oakwood Community Center	Unit 1	\$1,430[\$1,115]
	Unit 2	\$1,345[\$1,095]
	Unit 3	\$1,305[\$1,110]
	Unit 4	\$1,345[\$1,130]
Hazelwood Center		\$800[\$730]
Glasgow State Nursing Facility		\$340[\$335]
Del Maria		\$585[\$595]
Meadows		\$725[\$705]
Windson		\$630[\$635]
Eastern State Hospital		\$495
Volta House		\$140

(3) 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) 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

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 14, 2012 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 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 October 15, 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 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 until the close of business October 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Glenn Bryant or Ijeoma Eneje

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes 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.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with KRS 210.720(2) and assures that cabinet facilities maintain the financial ability to care for persons with mental health and mental retardation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.720(2) requires the cabinet to establish the patient cost per day for board, maintenance, and treatment for a facility operated by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the patient cost per day for board, maintenance, and treatment for a facility operated by the cabinet as required by state statute.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to establish the revised patient cost per day for facilities operated by the cabinet.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to assure that the per diem charge covers the actual costs incurred in the rendition of client care.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.720(2) requires the cabinet to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720(1). The amendment requires that every patient admitted to a facility operated by the cabinet, except for prisoners transferred in accordance with KRS 202A.201 shall be charged for board, maintenance, and treatment. This administrative regulation establishes a rate for room, board, and treatment at the facilities operated by the Cabinet for Health and Family Services. This charge rate reflects the actual cost of providing these services to clients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are sixteen (16) state operated facilities affected by this administrative regulation. This amendment will primarily affect patients admitted to facilities operated by the cabinet who have the private financial resources to pay for their care. Medicare, Medicaid, and private insurance payors do not base their reimbursement on this billed amount.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: This administrative regulation will assure that state operated facilities have sufficient revenues to provide the same level of care to indigent citizens as at present.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each facility will be required to change the charge rates in its billing system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This change will ensure that the facilities are reimbursed appropriately for services and treatments they rendered.

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

(a) Initially: There will not be an initial cost to implement this administrative regulation.

(b) On a continuing basis: There will not be an ongoing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds. The facilities operated by the cabinet will be required to change the charge rates on their computerized billing systems.

(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 adjusts the charge rates as established by this amendment and required by statute. While no funding is necessary to implement the amendment to this regulation, it is anticipated that a minimal amount of self-pay revenue, approximately \$14,000, would increase as a result of the amended per diem rates. This increased revenue would benefit some of the state operated facilities; it does not result in increased revenue to the department.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation establishes charges for room, board, and treatment at state operated facilities that are currently below cost. Per diem rates are set utilizing the facilities most recently completed cost reports.

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because all facility rates are set based on actual cost.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the sixteen (16) state operated facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.720(2)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will ensure appropriate charges for services to clients receiving treatment in any of the 16 state operated facilities.

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

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

(c) How much will it cost to administer this program for the first year? There will not be any cost associated to administering this regulation.

(d) How much will it cost to administer this program for subsequent years? There will not be any cost related to administering this regulation.

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

Revenues (+/-): This administrative regulation does not generate any revenue.

Expenditures (+/-): This administrative regulation sets per diem rate for facilities operated by the cabinet.

Other Explanation:



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Quality Living (Amendment)

#### 910 KAR 1:260. Kentucky Family Caregiver Program.

RELATES TO: KRS Chapter 13B, Chapter 514, 199.011(4), 205.455(4), 42 U.S.C. 601, 651, 1381, 3030s, 3030s-1

STATUTORY AUTHORITY: KRS 194A.050(1), 205.201(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.201(1) requires the cabinet to promote and aid in the establishment of local programs to the aging. KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate programs and fulfill the responsibilities vested in the cabinet. This administrative regulation establishes the Kentucky Family Caregiver Program.

Section 1. Definitions. (1) "District" is defined by KRS 205.455(4).

~~(2) "Exception committee" means a committee comprised of three (3) district directors or their designee:~~

~~(a) To consider an applicant's request for an exception as outlined in Section 6 of this administrative regulation; and~~

~~(b) Which is selected each fiscal year by the Executive Director of the Kentucky Council of Area Development Districts.~~

(3) "Federal poverty level" means the degree to which a household's gross income matches the official poverty income guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services.

~~(3)(4)~~ "Formal support system" means a service obtainable through public or private service programs.

~~(4)(5)~~ "Grandchild" means a grandparent's grandchild:

(a) Through blood, marriage, or adoption; and

(b) Who is no more than eighteen (18) years of age.

~~(5)(6)~~ "Grant" means a payment to a grandparent for services specified in Sections 6(3)(a) or 7(Section 7(3)(a) or 8) of this administrative regulation and based on:

(a) Need; and

(b) Actual cost.

~~(6)(7)~~ "Household" means an individual or group of individuals who are living together in a principal residence as one (1) economic unit.

~~(7)(8)~~ "Household income" means all annual gross earned and unearned income received by a household, including a:

(a) Lump sum payment; or

(b) State or federal benefit assistance payment.

~~(8)(9)~~ "Informal support system" means any care provided to an individual which is not provided as part of a public or private formal service program.

~~(9)(10)~~ "Local resolution" means a phone conversation or meeting between a grandparent and district to resolve the grandparent's dispute against denial of eligibility.

~~(10)(11)~~ "National Family Caregiver Support Program" means the program established by 42 U.S.C. 3030s-1.

~~(11)(12)~~ "Primary caregiver" means a grandparent providing full time care for that person's grandchild.

~~(12)(13)~~ "Respite services" is defined by KRS 205.455(12):

(a) For a designated time period; and

(b) To temporarily relieve a grandparent who serves as primary caregiver to a grandchild.

~~(13)(14)~~ "Supplemental services" means the services that a grandparent may receive in accordance with Section 7(8) of this administrative regulation through application and grant or voucher process.

~~(14)(15)~~ "Support services" means the services that a grandparent may receive in accordance with Section 6(7) of this administrative regulation through application and grant or voucher process.

~~(15)(16)~~ "Voucher" means a payment made directly to a vendor for the services specified in Sections 6(3)(a) or 7(7(3)(a) or 8) of this administrative regulation.

Section 2. Eligibility. (1) To be eligible for the Kentucky Family Caregiver Program, a grandparent shall:

(a) Be a Kentucky resident;

(b) Be the primary caregiver for a grandchild;

(c) Reside with the grandchild who shall not be residing in the same household with the grandchild's parent, but may reside in a house owned by the grandchild's parent;

(d) Not receive a monthly payment for Kinship Care in accordance with 922 KAR 1:130; and

(e) Not have household income that exceeds 150 percent of the federal poverty level.

(2) A grandparent who has adopted a grandchild shall be eligible for the Kentucky Family Caregiver Program:

(a) If the grandparent is not eligible for other state or federal adoption subsidies; and

(b) For a period not to exceed one (1) calendar year from final order of adoption.

(3) To apply or reapply for the Kentucky Family Caregiver Program, a grandparent shall complete, sign, and submit a DAIL-KFC-1 Application for Kentucky Family Caregiver Services:

(a) To a local district of residence; and

(b) For each voucher or grant requested.

(4) An applicant shall receive a written notice of eligibility or non-eligibility from a district within thirty (30) days of meeting the requirements of subsections (1) and (3) of this section.

(5) A payment from the Kentucky Family Caregiver Program may affect the eligibility income requirements for receipt of a federal or state benefit assistance payment.

(6) If a child receives assistance from the Kentucky Children's Health Insurance Program or the Department for Medicaid Services, the child shall not be eligible to receive the medical services specified in Section 7(1)(e)(8(1)(e)) of this administrative regulation.

(7) National Family Caregiver Support Program participation shall not exclude participation in the Kentucky Family Caregiver Program.

Section 3. District Responsibilities. (1) A district shall review the DAIL-KFC-1 Application for Kentucky Family Caregiver Services to determine completeness of the following information:

(a) Demographics;

(b) Establishment of eligibility relationship between grandparent and grandchild;

(c) Household income verified with:

1. A federal tax form;

2. A W-2;

3. A pay stub; or

4. Other documentation of monthly gross income;

(d) Living arrangements of household;

(e) Residency;

(f) Need per grandchild; and

(g) Formal or informal support systems.

(2) A district shall consider applications on a priority basis, with applicants that did not receive services through the program in the past fiscal year, receiving a higher priority.

(3) A district shall:

(a) Develop a policy and procedure for:

1. Grandparent outreach of the Kentucky Family Caregiver Program;

2. Assurance of a grandparent's eligibility in accordance with Section 2(1) and (2) of this administrative regulation;

3. Informing a grandparent of the grandparent's rights and responsibilities; and

4. Client confidentiality and referrals;

(b) Develop a process for use of assistance, including a grant or voucher;

(c) Develop a process for:

1. Billing a participating vendor for provided services;

2. Monitoring and evaluation of the program; and

3. The review of invoices and receipts for approved items and expenditures;

(d) Notify the cabinet in writing if the process specified in paragraph (c) of this subsection changes;

(e) Make payment for the services specified in Sections 6(3)(a) and 7(7(3)(a) and 8) of this administrative regulation through a voucher or grant;

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

- (f) Document and maintain a case file for a grandparent that:
1. Is kept in a locked cabinet;
  2. Has all documentation regarding the grandparent secured to the file; and
  3. Includes at a minimum:
    - a. The DAIL-KFC-1 Application for Kentucky Family Caregiver Services;
    - b. Consent and release of information;
    - c. Verification of eligibility;
    - d. Verification that the grandparent was informed of the grandparent's rights and responsibilities;
    - e. Documentation showing services provided;
    - f. Documentation of referrals and other resources given to the grandparent;
    - g. Progress notes or case notes, if applicable;
    - h. Correspondence, if applicable;
    - i. Documentation of grievance, local resolution, or hearing, if applicable;
    - j. Documentation of service termination, if applicable; and
    - k. Assignment of a case number;
- (g) Provide the department with documentation of services provided and the number of grandparents served through the Kentucky Family Caregiver Program in that district;
- (h) Verify with a local department for community based services office:
1. That a grandchild or grandparent is not receiving a monthly payment specified in Section 2(1)(e) of this administrative regulation;
  2. Any type of state or federal benefit assistance payment a grandparent or grandchild is receiving; and
  3. Medical services a grandchild receives through the Kentucky Children's Health Insurance Program or the Department for Medicaid Services;
- (i) Provide for appeal procedures in accordance with Section 10[11] of this administrative regulation;
- (j) Provide referral and assistance to access other community services needed by the grandparent or grandchild; and
- (k) Maintain a current fiscal year waiting list for prioritizing a grandparent in the following year if the grandparent:
1. Applied for the current fiscal year;
  2. Was not served in the current fiscal year; and
  3. Reapplies for the program the following fiscal year.

### Section 4. Department Responsibilities. The department shall:

- (1) Be the state-wide administrator for the Kentucky Family Caregiver Program;
- (2) Monitor a district at a minimum annually for assurance of compliance with the program requirements of this administrative regulation;
- (3) Allocate available funding; and
- (4) Provide technical and programmatic assistance, if needed.

Section 5. Kentucky Family Caregiver Payment. (1)[(a)] To the extent funds are available, the maximum total of assistance per grandchild, including a grant or voucher, shall be up to [no more than] \$500 per grandchild in any one (1) fiscal year [and no more than \$1,500 per household in any one (1) fiscal year].

(b) The applicant may request an exception to the \$1,500 allocation cap established in Section 6 of this administrative regulation.

(2) Funds shall be allocated based on priority order as specified in Section 3(2)[3(3)] of this administrative regulation.

(3) A grant or voucher shall not be given for services that occur before a district's establishment of a grandparent's eligibility.

(4) Prior approval with a district for counseling and supplemental services shall be required before actual purchase.

(5) If the Kentucky Family Caregiver Program funding is at capacity, an eligible applicant shall be placed on a waiting list and as funding becomes available be accepted for services in priority order as specified in Section 3(2)[3(3)] of this administrative regulation.

### Section 6. [Exceptions.

- (1) An applicant may request exceptions to receive Kentucky

Family Caregiver services for the \$1,500 household allocation cap specified in Section 5(1)(a) of this administrative regulation if a household request exceeds the cap based on number of grandchildren.

(2) A grant or voucher exceeding the household allocation cap specified in subsection (1) of this section shall not exceed \$500 per grandchild.

(3)(a) A district shall submit an exception request to the department within two (2) business days of the determination of eligibility as established in Section 2 of this administrative regulation.

(4) The department shall submit the exception request the exception committee within two (2) business days of receipt of the request.

(5) An exception committee shall:

1. Make a decision to an exception request; and
2. Submit the decision to the department within five (5) business days of receipt of the district's request.

(b) The department shall notify the district within two (2) business days of receipt of the exception committee's decision.

(c) The district shall notify the applicant within two (2) business days of receipt from the department of the exception committee's decision.

(6) An applicant shall apply for the exception provided by this section, by using the DAIL-KFC-1 Application for Kentucky Family Caregiver Services.

### Section 7.] Support Services. Support services shall include:

- (1) Information about available services;
- (2) Assistance in gaining access to services; and
- (3) Assistance to the grandparent in decision-making and problem-solving relating to a care giving role including:
  - (a) Individual counseling;
  - (b) Organization of a support group; and
  - (c) Caregiver training.

### Section 7.[8.] Supplemental Services.

(1) Supplemental services specific[related] to the grandchild shall include:

- (a) Child clothing and personal care needs;
- (b) Respite services provided by a caregiver or agency approved by the district, for the grandparent;
- (c) Educational supplies or assistance documented by the grandchild's school of attendance;
- (d) Required legal services which shall:
  1. Be related to the grandchild's safety and stability; and
  2. Not include representation against any criminal charges;
- (e) Medical and dental services, except for copays and premiums; and

(f) Furniture to be used by the grandchild including a:

1. Bed; or
2. Dresser.

### (2) Supplemental Services shall not include:

- (a) Utilities;
- (b) Appliances for household use, unless approved by the department;
- (c) Items utilized for the entire family;
- (d) Technology unless prescribed for communication due to a disability; or
- (e) Computers unless written documentation is provided by the school requiring a home computer and then one (1) per household is allowed.

Section 8. [(2) The applicant may request an exception for needs not otherwise specified as outlined in Section 6 of this administrative regulation.

### Section 9.] Grandparent Responsibilities. A grandparent shall:

- (1) Provide a district with the information required to determine eligibility as specified in Section 2 of this administrative regulation;
- (2) Comply with a district's application process as established in Section 2(3) of this administrative regulation;
- (3) Comply with the district's policies for expenditures of assistance, including:
  - (a) A grant or voucher; or

(b) Submittal of a receipt for cost reimbursement, if applicable.

(4) Comply with the appeal procedures established in Section 10[14] of this administrative regulation if making an appeal; and

(5) Notify the district immediately of a change in status that is in noncompliance with the eligibility requirements specified in Section 2 of this administrative regulation.

Section 9[10.] Fraud. A grandparent's fraudulent use of a voucher or grant may result in prosecution pursuant to KRS Chapter 514.

Section 10[14.] Appeal Procedure. (1) A grandparent wishing to appeal denied eligibility for services shall first have a local resolution with the district of residence.

(2) If the grandparent is dissatisfied with the results of the local resolution, the grandparent may request a state administrative hearing in accordance with KRS Chapter 13B.

Section 11[12.] Incorporation by Reference. (1) "DAIL-KFC-1 Application for Kentucky Family Caregiver Services", edition 7/2012[4/2010], is incorporated by reference.

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

DEBORAH S. ANDERSON, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 14, 2012 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2012, at 9:00 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 15, 2012, 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. 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 close of business October 31, 2012. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis Sosa

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards and policies for the Kentucky Family Caregiver Program.

(b) The necessity of this administrative regulation: This administrative regulation sets forth policies for operation of the Kentucky Family Caregiver in compliance with the legislative intent of HB 380 of the 2006 Session of the General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to 2006 Ky. Acts ch. 252 Part I.H.7.(7) by providing assistance, including grants or vouchers to grandparents who are primary caregivers of their grandchildren.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines standards and policies to implement the Kentucky Family Caregiver Program. In accordance with 2006 Ky. Acts ch. 252 Part I.H.7.(7), grandparents who are primary caregivers for their grandchildren will receive grants or vouchers per grandchild to be utilized for: 1) child clothing, 2) respite assistance,

3) educational supplies or assistance, 4) required legal services, 5) medical and dental services, and 6) other expenses that the cabinet authorizes for the grandchild.

(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 clarifies that funding is up to \$500 per grandchild in any one (1) fiscal year and removes the household cap of \$1500. This amendment eliminates the exception process to request more than \$500 per child or additional items not specified in the administrative regulation and identify items that shall not be provided through this funding.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to serve as many grandparents as possible and ensure the grant or voucher is for the benefit of the grandchild.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides better guidelines for administration of the program to serve those grandparents who are primary caregivers of their grandchildren and who request grants or vouchers pursuant to 2006 Ky. Acts ch. 252 Part I.H.7.(7).

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides better quality assurances for purchase of: 1) child clothing, 2) respite assistance, 3) educational supplies or assistance, 4) required legal services, and 5) medical and dental services

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: FY 2011 the program served 1,891 grandparents and 2,518 grandchildren, the Department for Aging and Independent Living, and fifteen (15) Area Agencies on Aging and Independent Living.

(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 grandparent will specify the grandchild's need during the application process and apply each time a request for a voucher or grant is made and provide documentation from the grandchild's school for need of educational supplies. The Department for Aging and Independent Living and the Area Agencies on Aging and Independent Living will comply with all requirements of this regulation to implement the Kentucky Caregiver Program.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More grandparents and grandchildren will be served arising from the changes to the program as a result of this administrative regulation.

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

(a) Initially: \$1,941,173.

(b) On a continuing basis: \$1,941,173.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund dollars.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since policy is implemented statewide.

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Aging and Independent Living and fifteen (15) area agencies on aging and independent living.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 2006 Ky. Acts ch. 252 Part I.H.7.(7)

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

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

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

(c) How much will it cost to administer this program for the first year? \$1,941,173.

(d) How much will it cost to administer this program for subsequent years? \$1,941,173.

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 2:090. Child-care center licensure.

RELATES TO: KRS Chapter 13B, 17.500–17.580, 17.165, Chapter 157, 199.011(1), (4), 199.892, 199.894(1), (3), 199.895, 199.896, 199.898, 600.020(1), 620.030(4)(3), 45 C.F.R. 98.2, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.894(1).

(3)(2) "Child" is defined by KRS 199.011(4) and may include a minor:

(a) Thirteen (13) years of age; or

(b) Eighteen (18) years of age if the minor has a special need for which supervision is required.

(4)(3) "Child-care center" is defined by KRS 199.894(3).

(5) "Licensee" means the owner and operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education.

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution.

~~(6)(4) "Developmentally appropriate" means suitable for the specific age range of the child.~~ (5) "Nontraditional hours" means the hours of:

(a) 7[6] p.m. through 5[6] a.m. Monday through Friday; or

(b) 7[6] p.m. on Friday until 5[6] a.m. on Monday.

~~7[6]~~ (6) "Parent" is defined by 45 C.F.R. 98.2.

(8) "Premises" means the building and contiguous property in which child care is provided.

~~(9)(7)~~ "Secretary" is defined by KRS 199.011(1).

(10) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

Section 2. Child-care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

(1) A Type I child-care center. This child-care center shall be licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee; and

(2) A Type II child-care center. This child-care center shall be primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 3. Exempt Child Care Settings. The following child-care settings shall be exempt from licensure requirements of this administrative regulation, 922 KAR 2:110, and 922 KAR 2:120:

(1) Summer camps certified by the cabinet as youth camps which serve school-age children;

(2) Kindergarten through grade 12 in private schools while school is in session;

(3) All programs and preschools regulated by the Kentucky Department of Education governed by KRS Chapter 157;

(4) Summer programs operated by a religious organization which a child attends no longer than two (2) weeks;

(5) Child care provided while parents are on the premises, other than the employment and educational site of parents;

(6) Child care programs operated by the armed services located on an armed forces base;

(7) Child care provided by educational programs that include parental involvement with the care of the child and the development of parenting skills;

(8) Facilities operated by a religious organization while religious services are being conducted; and

(9) A program providing instructional and educational programs:

(a) That operates for a maximum of twenty (20) hours per week; and

(b) Which a child attends for no more than ten (10) hours per week.

Section 4. Application. (1) An applicant for a license shall submit to the cabinet a completed OIG-DRCC-01, Child-Care Center License Application ~~[OIG-RCC-1, Application for a License to Operate a Child Care Center]~~.

(2) The issuance or reapproval of a license shall be governed under the provisions of Sections 4 through 7[6] of this administrative regulation.

(3) If the applicant for licensure is a:

(a) Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State; or

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(b) Partnership, the application shall include:

1. A written statement from each partner assuring that the partnership is current and viable; and

2. Proof that each individual is twenty-one (21) years or older by photo identification or birth certificate.

(4) If the status of a corporation, partnership, or ownership of the child-care center changes, the new entity shall submit a completed OIG-DRCC-01~~[OIG-RCC-1]~~.

(5) If ownership of a child-care center changes and the cabinet approves licensure upon inspection of the child-care center under the new ownership, the effective date on the license shall be the date of the approved inspection under the new ownership.

Section 5. Evacuation Plan. (1) A licensed child-care center shall have a written evacuation plan in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895.

(2) The cabinet shall post an online template of an evacuation plan that:

(a) Fulfills requirements of KRS 199.895;

(b) Is optional for a child-care center's completion; and

(c) Is available to a licensed child-care center without charge.

Section 6. License Issuance. (1) A license shall not be issued unless each background check required by KRS 199.896(19) has been completed on behalf of an applicant for licensure.

(2) A director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised~~[direct]~~ contact with, a child shall:

(a) Submit to~~[a]~~ background checks described in paragraph (b) of this subsection~~[check]~~;

(b) ~~[and (a)]~~ May be employed or work with a child on a probationary basis for up to ninety (90) calendar days, pending completion of a:

1. Child abuse or neglect check using the central registry in accordance with~~[described in]~~ 922 KAR 1:470;~~[and]~~

2. Criminal records check required by KRS 199.896(19);

3. Criminal records check for any previous state of residence if the person resided outside the state of Kentucky in the last five (5) years; and

4. An address check of the Sex Offender Registry; and

~~(c) [(b)]~~ Shall not be left alone in the presence of a child until copies of the background checks in accordance with paragraph (b) of this subsection have been received by the licensee~~[if each required background check has not been completed]~~.

(3) Upon completion of background checks~~[a child abuse or neglect check or criminal records check,]~~ described in subsection (2)~~(b)~~~~(a)~~ of this section, a licensee shall discharge immediately a director, employee, volunteer, or any person:

(a) Whose name is listed on the central registry established by 922 KAR 1:470; ~~or]~~

(b) Who has been convicted of a crime in accordance with~~[defined by]~~ KRS 17.165;

(c) Who is confirmed by an address check of the Sex Offender Registry and supporting document as a registered sex offender; and

(d) Who has been convicted of a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole~~[(1) through (3)]~~.

(4) An applicant who has been convicted of a nonviolent felony or misdemeanor shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences after conviction.

(5) If an applicant for licensure has had a prior certification, license, registration, or permit to operate denied, suspended, or revoked, the cabinet shall grant the applicant a license if:

(a) A three (3) year period has expired from the:

1. Date of the prior denial, suspension, or revocation;

2. Last day of legal remedies being exhausted; or

3. Administrative hearing decision; and

(b) The applicant has:

1. Demonstrated compliance with the provisions of this admin-

istrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896;

2. Completed, since the time of the prior denial, suspension, or revocation, sixty (60) hours of training in child development and child care practice, approved by the cabinet or its designee; and

3. Not had an application, certification, license, registration, or permit denied, revoked, or suspended for one (1) of the reasons set forth in KRS 199.896(19) or Section 11(2)~~[10(2)]~~ of this administrative regulation.

(6) If a license is granted after the three (3) year period specified in paragraph (a) of this subsection, the licensee shall serve a two (2) year probationary period during which the child-care center shall be inspected on at least a quarterly basis.

(7) A license shall specify:

(a) A particular premises~~[physical location]~~;

(b) A designated licensee~~[sponsor or owner as operator]~~;

(c) Age category of the children in care;

(d) The maximum number of children allowed under center supervision at one (1) time, including a child related to the licensee or an employee, based upon:

1. Available space as determined by the State Fire Marshal's Office in conjunction with the cabinet;

2. Adequacy of program;

3. Equipment; and

4. Staff;

(e) If provided, nontraditional hours;

(f) If provided, transportation; and

(g) A list of services to be provided by the child-care center.

(8) To qualify for and maintain a license, a child-care center shall:

(a) Provide written documentation from the local authority showing compliance with local zoning requirements;

(b) Be approved by the Office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county, and state laws;

~~(d) [Have adequate equipment, supplies, and staff to serve initial enrollment of children;~~

~~(e)]~~ Provide written proof of liability insurance coverage of at least \$100,000 per occurrence;

~~(e) [(f)]~~ Comply with provisions of this administrative regulation, 922 KAR 2:110, and 922 KAR 2:120;

~~(f) [(g)]~~ Cooperate with the state agency during:

1. An investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030~~(4)~~~~[(3)]~~; and

2. Unannounced cabinet inspections; and

~~(g) [(h)]~~ Have a director who meets the requirements listed in 922 KAR 2:110.

(9) A child-care center shall allow the cabinet or its designee and parent of an enrolled child unannounced access to the child-care center during the hours of operation.

(10) A license shall be issued and reapproved if the center has met the requirements contained in this administrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896(3), (13), (15), (16), (18), and (19).

(11) A license shall not be sold or transferred.

(12) Changes to a child-care center as listed in 922 KAR 2:110, Section 6(4), (5), and (6) shall be:

(a) In writing to the cabinet or its designee; and

(b) Signed by each owner listed on the license.

(13) The cabinet or its designee shall not charge a fee for acting upon reported changes.

(14) The license shall be posted in a conspicuous place in the child-care center.

(15) A child-care center shall not begin operation without a license to operate from the cabinet.

(16) A child-care center operating without a license shall be subject to legal action.

Section 7[6]. Fees. (1) A nonrefundable licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).

(2) Licensing fees shall be:

(a) Payable to the Kentucky State Treasurer;

(b) Attached to the licensure application; and

- (c) Paid by:
  1. ~~Cashier's~~[Cashiers] check;
  2. Certified check; or
  3. Money order.

Section 8[7]. Annual Reapproval. (1) A licensee seeking reapproval shall:

(a) Submit, one (1) month prior to license expiration, an ~~OIG-DRCC-01~~[OIG-RCC-2, Application for Renewal of a License to Operate a Child-Care Center]; and

(b)[(2)] Meet the requirements specified in Sections 4 through 7[6] of this administrative regulation.

(2) An application for renewal shall be denied in accordance with Section 11 of this administrative regulation.

Section 9[8]. Statement of Deficiency and Corrective Action Plans. (1) If a center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).

(2) Except for a violation posing an immediate threat as handled in accordance with KRS 199.896(5)(c), a child-care center shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days of receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

- (a) Specific action undertaken to correct a violation;
- (b) The date action was or shall be completed; and
- (c) Action utilized to assure ongoing compliance.

(4) The cabinet or its designee shall review the plan and notify the child-care center within thirty (30) calendar days of receipt of the plan, in writing, of the decision to:

- (a) Accept the plan;
- (b) Not accept the plan; or

(c) Deny, suspend, or revoke the child-care center's license, in accordance with Section 11[40] of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(6) A child-care center notified of the unacceptability of its plan shall:

- (a) Within ten (10) calendar days of notification, submit an amended plan; or
- (b) Have its license revoked or denied for failure to submit an acceptable amended plan in accordance with KRS 199.896(4).

(7) Following two (2) unacceptable plans of correction, in a forty-five (45) calendar day period, the cabinet may deny or revoke an application for licensure or license.

(8) The administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days of notification in accordance with KRS 199.896(5)(c).

Section 10[9]. Intermediate Sanctions. (1) If the cabinet determines that a child-care center is in violation of this administrative regulation, 922 KAR 2:110, or 922 KAR 2:120, the cabinet may, based on the severity of the violation:

- (a) Require the provider to participate in additional training;
- (b) Increase the frequency of monitoring by cabinet staff;
- (c) Enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance; or
- (d) Notify or require the provider to notify a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.

(2) An intermediate sanction shall result in a suspension or revocation of the license if a child-care center:

- (a) Fails to meet a condition of the intermediate sanction; or
- (b) Violates a requirement of an intermediate sanction.

Section 11[40]. Basis for Denial, Suspension or Revocation. (1) The cabinet shall deny, suspend, or revoke a license in accordance with KRS 199.896(4) and (19) if the applicant for licensure, director, employee, or a person who has supervisory authority over, or unsupervised[direct] contact with, a child fails to meet the requirements of this administrative regulation or those of 922 KAR 2:110 or 922 KAR 2:120.

(2) For the purposes of KRS 199.896(19), an applicant who has been found by the cabinet to have abused or neglected a child shall mean an individual who is listed on the central registry described in 922 KAR 1:470.

~~(3)[A child abuse or neglect check required by KRS 199.896(19) shall be conducted:~~

- ~~(a) One (1) time; and~~
- ~~(b) Within ninety (90) calendar days of initial employment.~~

~~(4)] A director, employee, volunteer, any person with supervisory or disciplinary control over, or having unsupervised~~[direct] contact with, a child shall report to the licensee if:

(a) Convicted of a violent crime or sex crime in accordance with KRS 17.165[defined by KRS 17.165(1) through (3)];

(b) The subject of a cabinet child abuse or neglect investigation;~~[or]~~

(c) Found by the cabinet or a court to have abused or neglected a child;

(d) Convicted of a drug-related felony, and five (5) years have not elapsed since the person was fully discharged from imprisonment, probation, or parole;

(e) Placed on the Sex Offender Registry; or

(f) Determined by a physician to have a health condition that renders the person unable to care for children.

~~(4)[(5)] Each licensee shall report to the cabinet or its designee if the licensee, director, employee, volunteer, or another person who submitted to a background check meets a criterion of subsection (3) [(4)] of this section.~~

~~(5)[(6)] Emergency action shall be taken in accordance with KRS 199.896(4).~~

~~(6)[(7)] Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).~~

(7) Unless an applicant for a license meets requirements of Section 6(5) of this administrative regulation,[(8)] the cabinet shall[may] deny an applicant for a license if:

(a) The applicant has been previously denied, suspended, or revoked;

(b) Denial, investigation, or revocation proceedings were initiated, and the licensee voluntarily relinquished the license;

(c) An appeal of a denial, suspension, or revocation is pending;

(d) The applicant previously failed to comply with the requirements of KRS 199.896, 922 KAR 2:110, 922 KAR 2:120, or this administrative regulation;~~[or]~~

(e) The applicant is the parent, spouse, sibling, or child of a previous licensee whose license was denied, suspended, or revoked as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the child-care center in any capacity;~~or~~

(f) The applicant listed as an officer, director, incorporator, or organizer of a cooperation or limited liability company whose child-care center license was denied, suspended, or revoked as described in paragraph (a) through (d) of this subsection within the past three (3) years.

~~(8)[(9)] A child-care center's license shall be revoked if:~~

(a) A representative of the center interferes with a cabinet representative's ability to perform an official duty; or

(b) A cabinet representative or parent is denied access to:

- 1. A child; or
- 2. The child-care center.

~~(9)[(10)] The cabinet or its designee shall suspend the license if:~~

(a) Regulatory violations are found that pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4); or

(b) The child care-center fails to comply with the approved corrective active plan.

Section 12[11]. Civil Penalty. The cabinet shall assess and enforce a civil penalty in accordance with 922 KAR 2:190.~~[Failure to Pay Civil Monetary Penalty. After sixty (60) calendar days of completing the administrative appeal process, a license shall be denied or revoked when a child-care center fails to:~~

~~(1) Pay the civil monetary penalty levied against the center; or~~

~~(2) Make arrangements to pay a civil monetary penalty and comply with the arrangement.]~~

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

Section 13[12]. Right of Appeal. (1) If an application has been denied or a licensee receives notice of suspension or revocation, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing form OIG-DRCC-02, Licensed Request for Appeal or Informal Dispute Resolution~~[OIG-RCC-3, Request for Appeal, for a hearing]~~. The request shall:

(a) Be submitted to the Secretary of the cabinet or designee within twenty (20) calendar days of receipt of the notice of adverse action; and

(b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files an OIG-DRCC-02~~[OIG-RCC-3]~~ for a hearing, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:

(a) Abate the formal hearing pending completion of the informal dispute resolution process; and

(b) Proceed to informal dispute resolution.

Section 14[13]. Informal Dispute Resolution.

(1) A request for informal dispute resolution shall:

(a) Accompany the request for a hearing;

(b) Identify the licensure deficiency in dispute;

(c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and

(d) Include documentation that disputes the deficiency.

(2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:

(a) Review documentation submitted by the applicant for licensure or licensee; and

(b) If requested, schedule a first-level informal dispute resolution meeting with the applicant for licensure or licensee.

(3) The first-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.

(4) The first-level informal dispute resolution meeting shall be conducted by:

(a) The regional program manager or designee; and

(b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.

(5) Within ten (10) calendar days of completion of the first-level informal dispute resolution meeting or request, the regional program manager or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(6) An applicant or a licensee may appeal a decision issued by the regional program manager or designee by:

(a) Proceeding with a hearing according to KRS 13B.050; or

(b) Filing a written request for a second-level informal dispute resolution to the Director of the Division of Regulated Child Care or designee within ten (10) calendar days of receipt of the first level decision. The request shall specify whether the applicant for licensure or licensee requests a meeting with cabinet staff.

(7) Upon receipt of the written request for second-level informal dispute resolution, the Director of the Division of Regulated Child Care or designee shall:

(a) Review the decision issued from the first-level informal dispute resolution;

(b) Review the documentation described in subsection (1)(d) of this section; and

(c) If requested, schedule a second-level informal dispute resolution meeting with the applicant for licensure or licensee.

(8) The second-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by

the cabinet, unless both parties agree in writing to an extension of time.

(9) Within ten (10) calendar days of completion of the second-level informal dispute resolution meeting or request, the Director of the Division of Regulated Child Care or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for second-level informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(10) If a second-level informal review is requested in lieu of a first-level informal dispute resolution meeting, the Director of the Division of Regulated Child Care or designee shall comply with the provisions of subsection (9)(a) through (c) of this section within ten (10) calendar days of receipt of the request for second-level informal dispute resolution.

(11) If an applicant for licensure or licensee is satisfied with the decision issued during informal dispute resolution, the request for a hearing shall be withdrawn.

(12) If an applicant for licensure or licensee is not satisfied with the decision issued from the second-level informal dispute resolution, the hearing previously held in abeyance shall be conducted in accordance with KRS Chapter 13B concerning the deficiencies that were reviewed in the informal review process.

(13) A request for informal dispute resolution shall not:

(a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or

(b) Delay submission of a written plan of correction.

(14) Emergency action taken in accordance with Section 11(5)~~[10(6)]~~ of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).

Section 15[14]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OIG-DRCC-01, Child-Care Center License Application", edition 8/3/12; and

(b) "OIG-DRCC-02, Licensed Request for Appeal or Informal Dispute Resolution", edition 8/3/12~~[OIG-RCC-1, Application for a License to Operate a Child-Care Center]~~, edition 12/07;

(b) "OIG-RCC-2, Application for Renewal of a License to Operate a Child-Care Center", edition 12/07; and

(c) "OIG-RCC-3, Request for Appeal", edition 12/07].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Inspector General's Office, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 13, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 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 licensure standards for a child-care center, and describes an applicant's and a child-care center's appeal rights and informal dispute resolution processes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a child-care center's licensure standards, appeal rights, and informal dispute resolution process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of licensure standards for a child-care center and related due process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care center licensure and related due 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: The amendment to this administrative regulation updates the standards for child-care center licensure consistent with recently enacted state law, KRS 199.895 concerning evacuation plan requirements, and related administrative regulations in Title 922 KAR Chapter 2 and their concurrent amendment. Standards across child-care provider types have been aligned with regard to required health considerations and background checks, including checks of the Sex Offender Registry, and common terminology. In addition, the amendment to this administrative regulation streamlines and clarifies initial application and renewal requirements for providers and criteria for denial, suspension, or revocation of licensure to include non-cooperation with unannounced inspections by the cabinet, unsatisfactory results from background checks, and non-compliance with corrective action plans; and exempts programs and preschools regulated by the Department of Education from licensure. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary as a result of the enactment of KRS 199.895 governing evacuation plan requirements for child-care centers, amendments to related administrative regulations in Title 922 KAR Chapter 2, and inputs solicited from stakeholders and gained through research since the administrative regulation's adoption.

(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 child-care center licensure standards and description of the appeal and informal dispute resolution processes.

(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 the quality of child-care center licensure standards in conformity with state law and expert recommendations, and related appeal and information dispute resolution processes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child-care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of June 30, 2012, there were 2,315 Kentucky licensed child-care centers.

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

including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation incorporates recently enacted state law, specifically KRS 199.895 governing evacuation plan requirements. Other requirements have been streamlined and made clearer and more consistent across provider types. Actions of the same caliber as present actions will be required of applicants and licensed child-care centers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will entail minimal, if any, new costs to new applicants or existing licensed child-care centers. The Department for Community Based Services (DCBS) assessed all suggested changes to the administrative regulation to avoid a negative fiscal impact to new or existing child-care providers. In addition, DCBS has partnered with various stakeholders to facilitate quality evacuation plan development and to develop free online training and a free online template for providers to reduce workload burden that may be associated with the more recently enacted KRS 199.895.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicant and licensed child-care centers and the children in their care will benefit from greater emergency preparedness, more streamlined and clear application and renewal requirements, and greater consistency in standards across child-care provider types.

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

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

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: The Child Care and Development Fund Block Grant, state match for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

There is no increase 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 any fees, or directly or indirectly increase any fees.

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

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2, 42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 199.896(2), (6)

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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 98.2, 42 U.S.C. 601-619, KRS 194A.050(1), 199.896(2), (6)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will 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? 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:

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

**922 KAR 2:100. Certification of family child-care homes.**

RELATES TO: KRS Chapter 13B, 17.165, 17.500 – 17.580, 186.020, 189.125, 194A.050(1), 199.011(2), (4), 199.894(5), 199.895, 199.896(18), 199.897, 199.898, 199.8982, 214.010, 214.036, 314.01(5), 527.070(1), 600.020, 620.020(8), 620.030, 16 C.F.R. 1219, 1220, 1221, ~~1508-1509~~ 45 C.F.R. 98.2, 49 C.F.R. 571.213, 42 U.S.C. 7181-7184[-]

STATUTORY AUTHORITY: KRS~~[13B-170,]~~ 194A.050(1), 199.8982(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.8982(1)(f) requires the cabinet to promulgate administrative regulations to establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, and suspension of a certificate of operation, and to impose minimum staff-to-child ratios for a family child-care home. The statute authorizes the cabinet to establish minimum safety requirements for operation of a certified family child-care home. This administrative regulation establishes minimum requirements intended to protect the health, safety, and welfare of children cared for by certified family child-care home providers.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Assistant" means a person:

(a) Who meets the requirements listed in Section 2~~(6)~~~~(5)~~ and Section 10~~9~~(7), (8), and (9) of this administrative regulation; and  
(b) Whose work is either paid or unpaid.

(3)~~(2)~~ "Cabinet" is defined by the KRS 199.011(2).

(4)~~(3)~~ "Child" is defined by KRS 199.011(4) and may include a minor:

(a) Thirteen (13) years of age; or

(b) Eighteen (18) years of age if the minor has a special need for~~in~~ which supervision is required.

(5)~~(4)~~ "Corporal physical discipline" is defined by KRS 199.896(18).

(6) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(7)~~(5)~~ "Family child-care home" is defined by KRS 199.894(5).

(8)~~(6)~~ "Health professional" means a person currently licensed as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse or practitioner; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(9)~~(7)~~ "Home" means the private primary residence of the certified family child-care home provider and contiguous property.

(10)~~(8)~~ "Infant" means a child who is less than twelve (12) months of age.

(11)~~(9)~~ "Parent" is defined by 45 C.F.R. 98.2.

(12)~~(10)~~ "Parental or family participation" means a family child-care home's provision of information or inclusion of a child's parent in the child-care home's activities such as:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between the provider and the parent; or

(d) Other activity designed to engage a parent in the program's activities.

(13) "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(14)~~(11)~~ "Premises" means the building and contiguous property in which child care is provided and certified.

(15) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(16)~~(12)~~ "Provider" means an owner, operator, or person who:

(a) Cares for a child in the provider's own home;

(b) Is not required to be licensed under 922 KAR 2:090; and

(c) Meets the requirements of Section 2 of this administrative regulation.

(17)~~(13)~~ "Related" means having one (1) of the following relationship with the provider:

(a)~~(1)~~ Child;

(b)~~(2)~~ Grandchild;

(c)~~(3)~~ Niece;

(d)~~(4)~~ Nephew;

(e)~~(5)~~ Sibling;

(f)~~(6)~~ Step-child; or

(g)~~(7)~~ Child in legal custody of the provider.

(18)~~(14)~~ "School-age child" means a child attending kindergarten, elementary, or secondary education.

(19) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(20)~~(15)~~ "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. (1) The cabinet or its designee shall be responsible for certifying a family child-care home.

(2) An applicant for certification shall:

(a) Show proof by photo identification or birth certificate that the individual is~~[Be]~~ at least eighteen (18) years of age;

(b) Obtain commercial liability insurance of at least \$50,000 per occurrence; and

(c) Submit within ninety (90) days of initiation of the application process:

1. A completed OIG-DRCC-03, Certification Application for Family Child-Care Home~~[OIG-RCC-4, Application for Certified~~

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

Family Child Care Home);

2. ~~A completed OIG-DRCC-6, Self-Check List;~~

3. ~~A nonrefundable certification fee pursuant to KRS 199.8982(1)(b);~~

3. ~~[4.] Written documentation from the local authority showing the child-care home is in compliance with local zoning requirements;~~

4. ~~[5.] Documentation of the requirements of KRS 199.8982(1)(a)1 through 3 and 5;~~

5. ~~[6.] A OIG-DRCC-04, Certified Family Child-Care Home Central Registry Check [OIG-RCC-5, Central Registry Check], to complete;~~

a. ~~A child abuse or neglect check using the central registry in accordance with 922 KAR 1:470; and~~

b. ~~An address check of the Sex Offender Registry;~~

6. ~~A completed criminal records check required by KRS 17.165(5); and~~

7. ~~A criminal records check for any previous state of residence completed once if:~~

a. ~~The applicant resided outside the state of Kentucky in the last five (5) years; and~~

b. ~~No criminal records check has been completed for the applicant's previous state of residence. [7. A completed criminal records check for the previous state of residence if the applicant has resided outside the state of Kentucky in the last five (5) years; and~~  
(c) ~~Obtain commercial liability insurance of at least \$50,000 per occurrence]~~

(3) ~~[Effective January 1, 2009,] An initial applicant for certification shall have a:~~

(a) ~~High school diploma, general equivalency diploma (GED), or documentation from a comparable educational entity; or~~

(b) ~~Commonwealth Child Care Credential in accordance with 922 KAR 2:250.~~

(4) ~~An applicant shall be currently certified by an [a] agency approved in accordance with 922 KAR 2:240 [Section 45] in infant and child. [;]~~

(a) ~~Cardiopulmonary resuscitation (CPR); and~~

(b) ~~First aid.~~

(5) ~~An adult living in the home of the applicant present during the hours of operation, or having unsupervised contact with a child in care, and the applicant's assistant shall submit to the cabinet:~~

(a) ~~[To] A criminal records check pursuant to KRS 17.165(5) by the Kentucky State Police or the Administrative Office of the Courts within a year prior to application [required by KRS 17.165 within a year prior to application by the Justice Cabinet or Administrative Office of the Courts];~~

(b) ~~A OIG-DRCC-04 to complete:~~

1. ~~A child abuse or neglect check using the central registry [To a child abuse or neglect check on OIG-RCC-5,] in accordance with 922 KAR 1:470; and~~

2. ~~An address check of Sex Offender Registry;~~

(c) ~~A criminal records check completed once for any previous state of residence if:~~

1. ~~The adult resided outside the state of Kentucky in the last five (5) years; and~~

2. ~~No criminal records check has been completed for the adult's previous state of residence; and~~

(d) ~~A copy of negative tuberculin results [the results of a negative tuberculosis skin test] or a health professional's statement documenting that the adult is free of active tuberculosis.~~

(6) ~~An applicant or [ef] assistant who has been convicted of a non-violent felony or misdemeanor may be approved on a case by case basis with consideration given to the:~~

(a) ~~Nature of the offense;~~

(b) ~~Length of time that has elapsed since the event; and~~

(c) ~~Applicant's life experiences after the conviction.~~

(7) ~~Upon receipt of a completed application for certification, and a nonrefundable certification fee pursuant to KRS 199.8982(1)(b), cabinet staff shall:~~

(a) ~~Review and process the application; and~~

(b) ~~Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b), including review of the evacuation plan in accordance with Section 18(7) of this administrative regulation.~~

(8) ~~If the requirements of subsections (1) through (7) of this~~

section, Section 3, and Sections 10[9] through 19[17] of this administrative regulation have been met, an applicant shall be certified as described in KRS 199.8982.

(9) ~~Within three (3) months of submission to the cabinet of a complete OIG-DRCC-03 [OIG-RCC-4], an applicant shall:~~

(a) ~~Demonstrate completion of six (6) hours of cabinet-approved training in accordance with KRS 199.8982(1)(a)6; and~~

(b) ~~Develop and implement a written plan for obtaining nine (9) hours of annual cabinet-approved training as required in Section 10[9](1) of this administrative regulation.~~

(10) ~~A [The] family child-care home certificate shall:~~

(a) ~~Be displayed in a prominent place, as required by KRS 199.8982(1)(c);~~

(b) ~~Contain the:~~

1. ~~Name and address of the child care provider;~~

2. ~~Maximum number of unrelated children who may be served;~~

3. ~~Identification number; and~~

4. ~~Effective and expiration date; and~~

(c) ~~Be valid for only the:~~

1. ~~Name of the individual authorized on the certificate to operate a family [child] child-care home; and~~

2. ~~Residential address printed on the certificate.~~

(11) ~~A change of location shall require:~~

(a) ~~A ten (10) calendar day notice;~~

(b) ~~A completed OIG-DRCC-03 [OIG-RCC-4];~~

(c) ~~An inspection of the new home; and~~

(d) ~~Continued compliance with this administrative regulation.~~

Section 3. Renewal of Certification. (1) A family child-care certification shall be renewed every two (2) years.

(2) A [The] family child-care home provider shall submit one (1) month prior to expiration of the provider's certification:

(a) A completed OIG-DRCC-03 [OIG-RCC-4];

(b) A nonrefundable renewal fee pursuant to KRS 199.8982(1)(b);

(c) A physician's statement documenting that the family child-care home provider's health is satisfactory for continued operation of a family child-care home; and

(d) Proof that the family child-care home provider continues to meet the minimum requirements specified in Sections 2, 3, and 10 [9] through 19[17] of this administrative regulation.

(3) The cabinet shall:

(a) Review and process the application;

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b); and

(c) Approve the family child-care home [;] within fifteen (15) calendar days of receipt of the application if the requirements in Sections 2, 3, and 10[9] through 19[17] of this administrative regulation are met.

(4) To the extent funds are available, the cabinet may conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b) annually as a condition of certification renewal.

Section 4. Statement of Deficiency and Corrective Action Plans. (1) If the cabinet finds a provider noncompliant with Sections 2, 3, or 10 through 19 of this administrative regulation, the cabinet or its designee shall complete a written statement of deficiency.

(2) Except for a violation posing an immediate threat, a family child-care home shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days from receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or will be completed; and

(c) Action utilized to assure ongoing compliance.

(4) The cabinet or its designee shall review the plan and notify a family child-care home within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the family child-care home's certification in accordance with Section 6, 7, or 8 of this administra-

tive regulation.

(5) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(6) A family child-care home notified of an unaccepted plan shall:

(a) Submit an amended plan within ten (10) calendar days of notification; or

(b) Have its certification revoked or denied for failure to submit an acceptable amended plan.

(7) Following two (2) unacceptable plans of correction in a forty-five (45) calendar day period, the cabinet shall deny an application for certification or revoke a provider's certification.

(8) An administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected by the family child-care home provider within five (5) working days of notification.

Section 5[4]. Denial of Application for Certification. (1) An application for initial certification or renewal of certification as a family child-care home[provider] shall be denied if the applicant, an assistant, or an adult residing in the household has:

(a) Has abused or neglected a child according to a check of the central registry in accordance with 922 KAR 1:470;~~[or]~~

(b) Has a history of behavior that may impact the safety or security of a child in care including:

1. A criminal conviction of a sex crime or violent crime in accordance with~~[as defined in]~~ KRS 17.165~~[(1) and (3)]~~;

2. A conviction for a drug-related felony, and (5) five years has not elapsed since the person was fully discharged from imprisonment, probation, or parole; or

3. Other behavior or condition indicating inability to provide reliable care to a child; or

(c) Is placed on the Sex Offender Registry.

(2) An application for certification as a family child-care home provider shall be denied if the applicant:

(a) Fails to comply with the minimum certification standards specified in Sections 10[9] through 19[17] of this administrative regulation and KRS 199.8982; or

(b) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee.

(3) Effect of previous denial or revocation.

(a) If an applicant has had a previous child care registration, certification, or license subject to denial, suspension, or revocation~~[for certification has had a prior certificate or license to operate a child-care business denied or revoked]~~ the cabinet shall grant the applicant a certificate to operate a family child-care home if:

1. A two (2) year period has expired from the:

a. Date of the prior denial, suspension, or revocation;

b. Last day of legal remedies being exhausted; or

c. Date of the Final Order from an administrative hearing; and

2. The applicant has:

a. The proven ability to comply with the provisions of this administrative regulation and KRS 199.8982;

b. Completed, since the time of the prior denial or revocation, sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice; and

c. Not had an application, registration, certificate, or license to operate as a child care provider denied or revoked for:

(i) Conviction of a sex crime or violent crime in accordance with~~[as defined in]~~ KRS 17.165~~[(1) and (3)]~~; ~~or]~~

(ii) Abuse or neglect of a child according to a child abuse and neglect check of the central registry in accordance with 922 KAR 1:470;

(iii) Placement on the Sex Offender Registry; or

(iv) Conviction of a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole.

(b) If a certificate is granted after the two (2) year period specified in paragraph (a) of this subsection, the provider shall serve a two (2) year probationary period during which the home shall be inspected on at least a quarterly basis.

Section 6[5]. Intermediate Sanctions. (1) If the cabinet deter-

mines that a certified family child-care home provider is in violation of this administrative regulation, the cabinet may, based on the severity of the violation:

(a) Require the provider to participate in additional training;

(b) Increase the frequency of monitoring by cabinet staff;

(c) Enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance; or

(d) Notify or require the provider to notify a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.

(2) An intermediate sanction shall result in a suspension or revocation of certification if a certified family child-care home provider:

(a) Fails to meet a condition of the intermediate sanction; or

(b) Violates a requirement of an intermediate sanction.

Section 7[6]. Suspension. The cabinet shall take emergency action in accordance with KRS 13B.125, by issuing an emergency order that results in suspension of the operation of a certified family child-care home. (1) An emergency order shall:

(a) Be served to a certified family child-care home provider in accordance with KRS 13B.050(2); and

(b) Specify the regulatory violation that caused the emergency condition to exist.

(2) Upon receipt of an emergency order, a~~[the]~~ provider shall surrender the certificate of operation to the cabinet.

(3) The cabinet or its designee and the provider shall make reasonable efforts to:

(a) Notify a parent of each child in care of the suspended provider; and

(b) Refer a parent for assistance in locating alternate child care arrangements.

(4) A~~[The]~~ provider's certification for operation of a family child-care home shall be revoked if:

(a) The provider does not request a hearing; or

(b) The condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

Section 8[7]. Revocation.(1) A family child-care home provider's certification shall be revoked if a~~[the]~~ provider:

(a) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;

(b) Interferes with a cabinet representative's ability to perform an official duty;

(c) Refuses, during the hours of operation, access by a parent or cabinet representative to:

1. A child; or

2. Space in the home used for child care;

(d) Is convicted of a criminal charge that threatens the health, safety, or welfare of a child in care;

(e) Is unable to operate a family child-care home due to a medical condition; or

(f) Is unable to continue to meet the requirements of KRS 199.8982(1) or Sections 2, 3, and Sections 10[9] through 19[17] of this administrative regulation.

(2) If the cabinet determines that a condition of subsection (1) of this section exists, the cabinet or its designee shall send a written notice of revocation delivered by personal service or through certified mail at least thirty (30) calendar days prior to the effective date of the revocation.

(3)The notice of revocation shall:

(a) Explain the reason for the revocation;

(b) Specify that the child care provider shall cease operation as a certified family child-care home upon revocation;

(c) Advise the family child-care home provider of the right to request an appeal on an OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal~~[OIG-RCC-7, Request for Appeal]~~, prior to the effective date of the revocation;

(d) Specify that revocation shall be stayed if an appeal is requested; and

(e) Require the family child-care home provider to surrender the certificate of operation to cabinet staff when the revocation

becomes effective.

(4) If a provider's certification has been revoked, the cabinet or its designee and the provider shall make reasonable efforts to:

- (a) Notify a parent of each child in care; and
- (b) Refer the parent for assistance in locating alternate child care arrangements.

Section 9[8]. Appeal of Denials, Intermediate Sanctions, Suspension, and Revocation. (1) If the cabinet denies certification, imposes an intermediate sanction, suspends certification, or revokes certification, the family child-care home provider may request an appeal by completing an OIG-DRCC-05 within twenty (20) calendar days of receipt of the notice of adverse action[OIG-RCG-7].

(2) Upon request of the appeal, the provider shall be afforded a hearing in accordance with KRS Chapter 13B.

(3)[(2)] If a[hearing officer's] final order from an administrative hearing does not uphold a suspension, the provider may resume providing child care.

Section 10[9]. Standards for the Provider. (1)(a) A[The] provider shall complete annually at least nine (9) hours of cabinet-approved early care and education[child development] training beginning with the second year of operation, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.8982(2):

1. Within the second year of employment or operation in child care; and

2. Every subsequent five (5) years of employment or operation in child care.

(b) A provider or assistant's compliance with the training in accordance with paragraph (a) of this subsection or subsection (9) of this section may be verified through the cabinet-designed database maintained pursuant to 922 KAR 2:240.

(2) A provider shall not provide care for more unrelated children than the number authorized on the certificate of operation.

(3) If a[the] provider cares for more than four (4) infants, including the provider's own or related infants, the provider shall have an assistant present.

(4) A provider shall not care for more than six (6) children under the age of six (6) years old, including the provider's own or related children.

(5) The maximum number of unrelated children in the care of a certified family child-care home provider shall not exceed six (6) at any one (1) time. A provider may care for four (4) related children in addition to six (6) unrelated children for a maximum child care capacity of ten (10) at any one (1) time.

(6) If a provider operates the in-home child care business for twenty-four (24) consecutive hours, the provider shall:

(a) Receive an eight (8) hour period of respite after working sixteen (16) consecutive hours; and

(b) Employ an assistant during the period of respite.

(7) Prior to being left alone with a child, an assistant shall be certified by a cabinet-approved agency in infant and child:

(a) CPR; and

(b) First aid.

(8) An assistant shall be:

(a) Eighteen (18) years of age or older;

(b) Under direct supervision of a provider;

(c) Used for providing care in a certified family child-care home; and

(d) Used in the absence of the certified provider.

(9) An assistant used in the absence of the family child-care home provider in excess of fourteen (14) calendar days during a one (1) year period shall demonstrate completion of at least nine (9) hours of cabinet-approved training, including pediatric abusive head trauma training pursuant to KRS 199.8982(2), in accordance with subsection (1) of this section.

(10) If a provider, an assistant, or a member in a provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the family-in-need-of-services assess-

ment or investigation; and

(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

(11) During hours of operation, a provider and another person in the home shall:

(a) Be free of the influence of alcohol or a controlled substance except for use of a controlled substance as prescribed by a physician; and

(b) Prohibit smoking in the presence of children in care.

(12) During a provider's absence, an assistant shall be physically present at the home during hours of operation.

(13) A provider shall:

(a) Not be employed outside of the home during regular hours of operation; and

(b) Maintain daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the provider through the Child Care Assistance Program[in:

(a) Basic health, safety, and sanitation;

(b) Recognizing and reporting child abuse;

(c) Developmentally appropriate child care practice; and

(d) Early care and education].

Section 11[40]. The General Requirements of the Family Child-Care Home Environment. (1) A[The] provider's home and each play area used for child care shall:

(a) Be free from risk of harm in accordance with the requirements of this administrative regulation; and

(b) Have adequate:

1. Heating and cooling;

2. Light; and

3. Ventilation.

(2) Each floor level used for child care shall have at least one

(1):

(a) Unblocked exit to the outside;

(b) Smoke detector;

(c) Fire extinguisher; and

(d) Carbon monoxide detector if the home:

1. Uses fuel burning appliances; or

2. Has an attached garage.

(3) A new applicant or a provider who changes location shall have at least two (2) unblocked exits to the outside on each floor level used for child care.

(4) The areas of the home that are accessible to children in care shall be free from items harmful to children including the following items:

(a) Cleaning supplies, poisons, paints, and insecticides;

(b) Knives, scissors, and sharp objects;

(c) Power tools, lawn mowers, hand tools, nails, and other equipment;

(d) Matches, cigarettes, lighters, combustibles, and flammable liquids;

(e) Alcoholic beverages;

(f) Plastic bags; and

(g) Litter and rubbish.

(5) In accordance with KRS 527.070(1), firearms[Guns] and ammunition shall be stored away from the presence of children, in separate locked containers, which, in order to be opened, require a:

(a) Key; or

(b) Combination.

(6) Electrical outlets not in use shall be covered.

(7) An electric fan, floor furnace, or freestanding heater or fireplace shall:

(a) Be out of the reach of a child; or

(b) Have a safety guard to protect a child from injury.

(8) A certified family child-care[The] home shall have:

(a) At least one (1) working land-line telephone on each level used for child care[;] unless the cabinet has been notified that the telephone is temporarily out of service[telephone on each level used for child care with a residential or commercial line]; and

(b) A list of emergency numbers posted by each telephone,

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

including numbers for the:

1. Police;
  2. Fire station;
  3. Emergency medical care and rescue squad; and
  4. Poison control center.
- (9) Equipment and toys shall be:
- (a) Designated by the manufacturer as developmentally appropriate to the age of children in care;
  - (b) In sufficient quantity for the number of children in care; and
  - (c) Safe, sound, clean, and in good repair.
- (10) Television or video viewing by a child shall be limited to:
- (a) Two (2) hours daily;
  - (b) The planned program activities; and
  - (c) Developmentally appropriate child-related content, as designated by standardized content guidelines.
- (11) Stairs and steps used for children in care shall be:
- (a) Solid;
  - (b) Safe; and
  - (c) Railed.
- (12) If an infant or toddler is in the care of a provider, indoor stairs with more than two (2) steps shall be blocked.
- (13) Exclusive of the bathroom and storage area, an indoor area, including furnishings, used for child care shall contain at least thirty-five (35) square feet per child for:
- (a) Play; and
  - (b) Activities that meet the developmental needs of the children in care.
- (14) An outdoor play area shall be free of unavoidable danger or risk.
- (15) Each child in an outdoor play area shall be under the direct supervision of the provider or assistant.
- (16) Outdoor stationary play equipment shall be:
- (a) Securely anchored;
  - (b) Developmentally appropriate; and
  - (c) Age appropriate; and
  - (d) Safe.
- (17) A trampoline shall not be accessible to a child in the care of a provider.
- (18) A swimming pool on the premises shall:
- (a) Be maintained;
  - (b) Have a water filtering system;
  - (c) Be supervised when in use; and
  - (d) Be inaccessible to children when not in use.
- (19) An above-ground pool shall have:
- (a) A stationary wall no less than four (4) feet tall; and
  - (b) Hand holds or foot holds that are inaccessible when the pool is not in use.
- (20) A fire ~~and tornado~~ drill shall be conducted during hours of operation:
- (a) At least monthly; and
  - (b) Documented.
- (21) An earthquake drill and a tornado drill shall be conducted during hours of operation:
- (a) At least quarterly; and
  - (b) Documented.
- (22) A family child care ~~During hours of operation, the provider and other persons in the home shall:~~
- ~~(a) Be free of the influence of alcohol or a controlled substance, except for use of a controlled substance prescribed by a physician; and~~
  - ~~(b) Prohibit smoking in the presence of children in care.~~
- (23) During a provider's absence, an assistant shall be physically present at the home during hours of operation.
- (24) A provider shall not be employed outside of the home during regular hours of operation.
- (25) The home shall:
- (a) Be clean;
  - (b) Be uncluttered;
  - (c) Be free of insects and rodents;
  - (d) Have a water supply that is:
    1. Potable;
    2. Adequate; and
    3. From an approved public water supply; and
  - (e) Have bathrooms, including toilets, sinks, and potty chairs

that are:

1. Sanitary; and
  2. In good working condition.
- ~~(22)(26) A child shall wash hands with liquid soap and warm running water:~~
- ~~(a) Before and after eating or handling food;~~
  - ~~(b) After toileting or diaper change;~~
  - ~~(c) After handling animals;~~
  - ~~(d) After wiping or blowing nose;~~
  - ~~(e) After touching items soiled with body fluids or waste; and~~
  - ~~(f) After outdoor and indoor play time.~~
- ~~(27) The provider and an assistant shall:~~
- ~~(a) Wash hands with liquid soap and warm running water:~~
    - ~~1. Before and after diapering a child;~~
    - ~~2. Before and after feeding a child;~~
    - ~~3. After toileting or assisting a child with toileting;~~
    - ~~4. After handling animals;~~
    - ~~5. Before dispensing medication;~~
    - ~~6. After caring for a sick child; and~~
    - ~~7. After wiping or blowing a child's or own nose;~~
  - ~~(b) Assure that a child shall not share:~~
    - ~~1. Cups;~~
    - ~~2. Eating utensils;~~
    - ~~3. Wash cloths;~~
    - ~~4. Towels; and~~
    - ~~5. Toiletry items.~~
- ~~(28) The refrigerator shall:~~
- ~~(a) Be in working order; and~~
  - ~~(b) Maintain product temperature at or below forty-five (45) degrees Fahrenheit.~~
- ~~(29) Except if thawed for preparation or use, frozen food shall be kept at a temperature of zero degrees Fahrenheit as verified by a thermometer in the freezer.~~
- ~~(30) While bottle-feeding an infant, the:~~
- ~~(a) Child shall be held; and~~
  - ~~(b) Bottle shall not be:~~
    - ~~1. Propped;~~
    - ~~2. Left in the mouth of a sleeping infant; or~~
    - ~~3. Heated in a microwave.~~
- ~~(31) Windows, doors, and outer openings shall be screened to prevent the entrance of vermin[.to prevent the entrance of vermin].~~
- ~~(23)(32) Indoor and outdoor garbage shall be stored in a waterproof container with a tight-fitting cover.~~
- ~~(24) Playpens and play yards shall:~~
- ~~(a) Meet the federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;~~
  - ~~(b) Be manufactured for commercial use; and~~
  - ~~(c) Not be used for sleeping or napping[(33) Adequate space shall be provided at rest time for each child in care more than four (4) hours:~~
    - ~~(a) Rest time area shall be comfortable, clean, safe, and in good repair.~~
    - ~~(b) An individual bed, crib, play pen, two (2) inch thick waterproof mat, or cot with comfortable, clean, safe bedding shall be provided for each child.~~
    - ~~(c) A crib or play pen shall meet the Consumer Products Safety Commission Standards established in 16 C.F.R. 1508-1509.~~
    - ~~(d) Individual linens shall be:~~
      - ~~1. Provided for each child; and~~
      - ~~2. Changed:~~
        - ~~a. At least weekly; or~~
        - ~~b. If soiled or wet, immediately.~~
    - ~~(34) If overnight care is provided, the caregiver shall:~~
      - ~~(a) Remain awake until every child in care is asleep; and~~
      - ~~(b) Sleep on the same floor level of the home as an infant or toddler.~~
    - ~~(35) A written and posted routine plan shall be established for daily:~~
      - ~~(a) Activity;~~
      - ~~(b) Opportunity for outdoor play; and~~
      - ~~(c) Reading.~~

~~(36) A child who is not asleep shall be visually supervised.~~

~~(37) Except for a school-aged child whose parent has given written permission and whose whereabouts are known, a child~~

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

shall not be permitted off the premises without the caregiver.

(38) Use of corporal physical discipline shall be prohibited, pursuant to KRS 199.896(18).

(39) A child shall be released from the family child-care home to:

(a) The child's custodial parent;

(b) The person designated in writing by the parent to receive the child; or

(c) In an emergency, a person designated over the telephone by the parent.

(40) To assure a healthy environment, the provider shall maintain a:

(a) Current immunization certificate for each child within thirty (30) days of enrollment, unless an attending physician or parent objects to the immunization of a child pursuant to KRS 214.036;

(b) Written record:

1. Completed and signed by the child's parent; and

2. Retained on file on the first day the child attends, to include:

a. The child's name, address, and date of birth;

b. The name of each individual to whom the child may be released;

c. The general status of the child's health;

d. Allergies or restrictions on the child's participation in activities, with specific instructions from the child's parent or physician;

e. The name and phone number of each person to be contacted in an emergency situation;

f. The name and phone number of the child's physician and preferred hospital; and

g. Authorization by the parent for the provider to seek emergency medical care in the parent's absence.

(41) A provider shall provide immediate notification of a medical emergency to the:

(a) Parent;

(b) Person exercising custodial control; or

(c) Family physician, if the parent or person exercising custodial control is unavailable.

(42) A quiet, separate area that is easily supervised shall be provided for a child too sick to remain with other children.

(43) The provider shall:

(a) Be able to recognize symptoms of childhood illnesses;

(b) Be able to provide basic first aid;

(c) Maintain a child-care program that assures affirmative steps are taken to protect children from abuse or neglect pursuant to KRS 600.020(1); and

(d) Maintain daily attendance records documenting the arrival and departure time of each child.

Section 12[14]. Care Requirements for a Provider. (1) A provider shall ensure the health, safety, and comfort of each child.

(2) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

(3) Television or video viewing by a child shall be limited to:

(a) Two (2) hours daily;

(b) The planned program activities; and

(c) Developmentally appropriate child-related content, as designated by standardized content guidelines.

(4) A child shall wash hands with liquid soap and warm running water:

(a) Before and after eating or handling food;

(b) After toileting or diaper change;

(c) After handling animals;

(d) After wiping or blowing nose;

(e) After touching items soiled with body fluids or waste; and

(f) After outdoor and indoor play time.

(5) A provider and an assistant shall:

(a) Wash hands with liquid soap and warm running water:

1. Before and after diapering a child;

2. Before and after feeding a child;

3. After toileting or assisting a child with toileting;

4. After handling animals;

5. Before dispensing medication;

6. After caring for a sick child; and

7. After wiping or blowing a child's or own nose; and

(b) Assure that a child does not share:

1. Cups;

2. Eating utensils;

3. Wash cloths;

4. Towels; and

5. Toiletry items.

(6) An infant shall sleep and nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(7) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(8) Rest time shall include adequate space specified by the child's age as follows:

(a) For an infant:

1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;

2. A firm crib mattress in good repair with a clean tight-fitted sheet that is changed:

a. Weekly; or

b. Immediately if it is soiled or wet;

3. No positioning device or monitor unless the device or monitor is required by the infant's health professional;

4. No loose bedding; and

5. No toys or other items except for the infant's pacifier; or

(b) For a toddler or preschool-age child:

1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and

2. Bedding that is in good repair and is changed:

a. Weekly; or

b. Immediately if it is soiled or wet.

(9) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending nontraditional hours or is sick.

(10) A child who does not sleep shall be permitted to play quietly and be visually supervised.

(11) If overnight care is provided, a provider or an assistant shall:

(a) Remain awake until every child in care is asleep; and

(b) Sleep on the same floor level of the home as an infant or toddler.

(12) A certified family child care home shall provide a daily planned program:

(a) Posted in writing in a conspicuous location;

(b) Of activities that are individualized and developmentally appropriate for each child served;

(c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) That offers a variety of creative activities including:

1. Art;

2. Music;

3. Dramatic play;

4. Stories and books;

5. Science;

6. Block building;

7. Tactile activity;

8. Culture;

9. Indoor or outdoor play in which a child makes use of both small and large muscles;

10. A balance of active and quiet play, including group and individual activity; and

11. An opportunity for a child to:

a. Have some free choice of activities;

b. If desired, play apart from the group at times; and

c. Practice developmentally appropriate self-help procedures in respect to:

(i) Clothing;

(ii) Toileting;

(iii) Hand-washing; and

(iv) Eating.

(13) Except for a school-aged child whose parent has given written permission and whose whereabouts are known, a child shall not be permitted off the premises of a family child-care home without a caregiver.

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(14) Use of corporal physical discipline shall be prohibited pursuant to KRS 199.896(18).

(15) A child shall be released from a family child-care home to:

(a) The child's custodial parent;

(b) The person designated in writing by the parent to receive the child; or

(c) In an emergency, a person designated over the telephone by the parent.

Section 13. Toilet and Diapering Requirements. (1) A toilet room shall:

(a) Have an adequate supply of toilet paper; and

(b) Be cleaned and sanitized daily.

(2) A sink shall be;

(a) Located in or immediately adjacent to toilets;

(b) Equipped with hot and cold running water that allows for hand washing;

(c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120[no more than 140] degrees Fahrenheit;

(d) Equipped with liquid soap and single use, disposable hand drying material;

(e) Equipped with an easily cleanable, covered waste receptacle; and

(f) Immediately adjacent to a changing area used for infants and toddlers.

(3) Each toilet shall:

(a) Be kept in clean condition;

(b) Be kept in good repair;

(c) Be in a lighted room; and

(d) Have ventilation.

(4) Toilet training shall be coordinated with the child's parent.

(5) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

(6) If a toilet training chair is used, the chair shall be:

(a) Emptied promptly; and

(b) Sanitized after each use.

(7) Diapers or clothing shall be:

(a) Changed when soiled or wet;

(b) Stored in a covered leak proof container temporarily; and

(c) Washed or disposed of at least once a day.

(8) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.

(9) If a child is being diapered, the child shall:

(a) Not be left unattended; and

(b) Be placed on a surface that is:

1. Clean;

2. Padded;

3. Free of holes, rips, tears, or other damage;

4. Nonabsorbent;

5. Easily cleaned; and

6. Free of items not used for diaper changing.

(10) Unless prescribed by a physician, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.

(11) A provider or an assistant[Staff] shall disinfect the diapering surface after each child is diapered.

(12) If a provider or an assistant[staff] wear disposable gloves, the gloves shall be changed and disposed of after each child is diapered.

Section 14[42]. Food Requirements. (1) A[The] provider and an assistant shall:

(a) Use sanitary procedures when preparing and serving food;

(b) Refrigerate perishable food and beverages; and

(c) Serve:

1. Breast milk or iron-fortified formula to a child age birth to twelve (12) months;

2. Pasteurized whole milk to a child age twelve (12) months to twenty-four (24) months; or

3. Pasteurized skim or low fat 1% milk to a child age twenty-four (24) months to school-age[milk or milk products that are pasteurized].

(2) Water shall be:

(a) Available to a child in care; and

(b) Served in addition to meal requirements if a child requests throughout the day.

(3) A certified family child-care home shall offer each child the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.

(4) Second servings shall be available to a child.

(5) Food shall not be used for:

(a) Reward;

(b) Punishment; or

(c) Withheld until all other food items are consumed.

(6) Meals shall:

(a) Be served in an amount appropriate to the age of the child; and

(b) Include appropriate types of food according to the age of the child; and

(c) Not be served during television or video viewing.

(7)[(3)] Breakfast shall include:

(a) Milk;

(b) Whole grain or enriched bread; and

(c) Fruit, vegetable, or 100 percent juice.

(8)[(4)] A snack shall include two (2) of the following:

(a) Milk;

(b) Protein source;

(c) Fruit, vegetable, or 100 percent juice; or

(d) Whole grain or enriched bread.

(9)[(5)] Lunch and dinner shall include:

(a) Milk;

(b) Protein source;

(c) 1. Two (2) vegetables;

2. Two (2) fruits; or

3. One (1) fruit and one (1) vegetable; and

(d) Whole grain or enriched bread.

(10)[(6)] A weekly menu shall be:

(a) Prepared;

(b) Dated;

(c) Posted in a conspicuous place; and

(d) Kept on file for thirty (30) calendar days.

(11)[(7)] Substitutions to a posted weekly menu shall be noted on the day the meal is served.

(12)[(8)] Unless provided as part of the fee for child care or the provider is a participant in the food program, an infant's formula shall be prepared, labeled, and provided by the parent[.-(a) Prepared;

(b) Labeled; and

(c) Provided by the parent].

(13)[(9)] Each child's bottle shall be:

(a) Labeled;

(b) Covered; and

(c) Refrigerated.

(14) The refrigerator shall:

(a) Be in working order; and

(b) Maintain a product temperature at or below forty-five (45) degrees Fahrenheit.

(15) Except if thawed for preparation or use, frozen food shall be kept at a temperature of zero degrees Fahrenheit as verified by a thermometer in the freezer.

(16) While bottle-feeding an infant, the:

(a) Child shall be held; and

(b) Bottle shall not be:

1. Propped;

2. Left in the mouth of a sleeping infant; or

3. Heated in a microwave.

Section 15[43]. Medication and First Aid. (1) Medication, including medicine that requires refrigeration, shall be stored in a locked container or area with a lock.

(2) Prescription and nonprescription medication shall [not] be administered to a child in care with[, without] a daily written request of the child's parent.

(3) Prescription and nonprescription~~[Nonprescription medication:~~

(a) May be given to a child only with the written daily request of

the:

1. ~~Parent; or~~
2. ~~Person exercising custodial control of the child; and~~
- (b) ~~Shall be administered according to the instructions on the~~

label:

- (4)] medications shall be:
  - (a) Labeled; and
  - (b) Administered according to directions or instructions on the

label.

- (4) ~~A[(5) The]~~ provider shall:

(a) Maintain first aid supplies that are easily accessible for use in an emergency, and these supplies shall be inaccessible to the children in care; and

(b) Wash superficial wounds with soap and water before bandaging.

(5)[(6)] First aid supplies shall include a fully-equipped first aid kit containing the following nonexpired items:

- (a) Liquid soap;
- (b) Adhesive bandages;
- (c) Sterile gauze;
- (d) Medical tape;
- (e) Scissors;
- (f) Thermometer;
- (g) Flashlight;
- (h) Cold pack;
- (i) First-aid book;
- (j) Disposable gloves; and
- (k) CPR mouthpiece.

(6) A provider shall provide immediate notification of a medical emergency to a child's:

- (a) Parent; or
- (b) Family physician, if the parent is unavailable.

(7) A quiet, separate area that is easily supervised shall be provided for a child too sick to remain with other children.

(8) A provider and an assistant shall:

- (a) Be able to recognize symptoms of childhood illnesses;
- (b) Be able to provide basic first aid; and
- (c) Maintain a child care program that assures affirmative steps are taken to protect children from abuse or neglect pursuant to KRS 600.020(1).

Section 16[14]. Animals. (1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

1. The animal is under the supervision and control of an adult;
2. Written parental consent has been obtained; and
3. The animal is certified as vaccinated against rabies; or
- (b) Except in accordance with subsection (3) of this section.

Animals shall be:

(a) ~~Supervised by an adult if in the presence of children in care; and~~

(b) ~~Certified as properly vaccinated against rabies.]~~

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a certified family child-care home unless the animal is:

(a) A part of a planned program activity led by an animal specialist affiliated with a zoo or nature conservatory; and

(b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.[(3) Animals that are considered undomesticated, wild, or exotic shall not be allowed in a family child-care home.]

Section 17[15]. Transportation. (1) If transportation is provided or arranged by the certified family child-care home provider, the provider shall:

(a) Have written permission from a parent to transport his or her child;

(b) Have a car or van equipped with seat belts;

(c) Require that a child:

1. Be restrained in an appropriate safety seat meeting state and federal motor vehicle safety standards in accordance with KRS 189.125 and 49 C.F.R. 571.213;

2. Remain seated while the vehicle is in motion; and

3. If under thirteen (13) years of age, be transported in the back seat;

(d) Have a valid driver's license issued by the Division of Motor Vehicles;

(e) Have emergency and identification information about each child in the vehicle if children are being transported; and

(f) Conform to state laws pertaining to vehicles, driver's[drivers] license, and insurance pursuant to KRS 186.020.

(2) A child shall not be left unattended in a vehicle.

(3) The back of a pickup truck shall not be used to transport a child.

(4) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

Section 18[16]. Records. (1) A provider shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;

(b) A written record for each child:

1. Completed and signed by the child's parent;

2. Retained on file on the first day the child attends the family child-care home; and

3. To contain:

a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;

b. Contact information to enable the provider to contact the child's:

(i) Parent at the parent's home or place of employment;

(ii) Family physician; and

(iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. The child's general health status and medical history including, if applicable:

(i) Allergies;

(ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and

(iii) Permission from the parent for third-party professional services in the family child-care home;

e. The name and phone number of each person to be contacted in an emergency situation involving or impacting the child;

f. Authorization by the parent for the provider to seek emergency medical care for the child in the parent's absence; and

g. A permission form for each trip away from the family child-care home signed by the child's parent in accordance with Section 17(1) of this administrative regulation; and

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the provider through the Child Care Assistance Program;

(2) A certified family child-care home provider shall maintain the confidentiality of a child's records.

(3)[(2)] The cabinet shall provide, upon request, public information pursuant to KRS 199.8982(1)(d) and (e).

(4) A certified family child-care home[(3) The] provider shall:

(a) Report an incident of suspected child abuse or neglect pursuant to KRS 620.030(1); and

(b) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(4)[(3)].

(5)[(4)] A certified family child-care home provider shall maintain a written record of:

(a) Quarterly practiced earthquake drills and tornado drills detailing the date, time, and participants in accordance with Section 11(20) of this administrative regulation;

(b) Monthly practiced fire drills detailing the date, time, and participants in accordance with Section 11(19) of this administrative regulation; and

(c) Reports to the cabinet that are required in accordance with Section 19(10) of this administrative regulation[keep a written daily record of the times a child arrives and departs].

(6)[(5)] A certified family child-care home provider shall keep all records for five (5) years.



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(7)(a) A certified family child-care home provider shall have a written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care in accordance with KRS 199.895.

(b) The cabinet shall post an online template of an evacuation plan that:

1. Fulfills requirements of KRS 199.895;
2. Is optional for an applicant or a family child-care home's completion; and
3. Is available to an applicant or a family child-care home without charge.

Section 19[47]. Certified Family Child-Care Home Program. The certified family child-care home provider shall:

- (1) Develop written information that specifies the:
  - (a) Rate for child care;
  - (b) Expected frequency of payment for the program;
  - (c) Hours of operation; and
  - (d) Policy regarding:
    1. Late fees;
    2. Holidays;
    3. Vacation;
    4. Illness; and
    5. Emergency pick up;
- (2) Make available a copy of the certification standards to each parent;
- (3) Provide each parent with the name, address, and telephone number of the cabinet for the purpose of registering a complaint if the parent believes the family child-care home provider is not meeting the standards;
- (4) Post and provide to each parent a copy of children and parent rights, as required by KRS 199.898;
- (5) Allow a parent and the cabinet or its designee access to the family child-care home at any time a child is in care;
- (6) Communicate with each child's parent about the child's:
  - (a) Development;
  - (b) Activities;
  - (c) Likes; and
  - (d) Dislikes;
- (7) Post in a prominent area in the home:
  - (a) The staff to child ratios described in Section 10[9] of this administrative regulation;
  - (b) The planned program of activities;
  - (c) Each statement of deficiency issued by the cabinet during the current certification period;
  - (d) Each plan of correction submitted by the certified family child-care home to the cabinet during the current certification period; and
  - (e) Daily schedule including any trips outside the family child-care home;
- (8) Coordinate at least one (1) annual activity involving parental or family participation;~~and~~
- (9) Maintain a written child care agreement with each child's parent, including the name of each person designated by the parent to pick up the child;~~and~~
- (10) Report:
  - (a) The following to the cabinet within twenty-four (24) hours from the time of discovery:
    1. A communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;
    2. An accident or injury to a child that requires medical care;
    3. An incident that results in legal action by or against the family child-care home that affects:
      - a. A child in care;
      - b. The provider;
      - c. An assistant; or
      - d. A member of the provider's household;
    4. An incident involving fire or other emergency; or
    5. A report of child abuse or neglect that:
      - a. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and
      - b. Names the alleged perpetrator as the:
        - (i) Provider;
        - (ii) Provider's assistant; or

(ii) Member of the provider's household;

(b) The death of a child to the cabinet within one (1) hour; or

(c) Temporary or permanent closure as soon as practicable to the cabinet and the parent of a child in the family child-care home.

Section 20[48]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OIG-DRCC-03. Certification Application for Family Child-Care Home", edition 8/3/12;

(b) "OIG-DRCC-04. Certified Family Child-Care Home Central Registry Check", edition 8/3/12; and

(c) "OIG-DRCC-05. Certified Family Child-Care Home Request for Appeal" edition 8/3/12[OIG-RCC-4, Application for Certified Family Child-Care Home", edition 12/07;

(b) "OIG-RCC-5, Central Registry Check", edition 12/07;

(c) "OIG-RCC-6, Self-Check List", edition 12/07; and

(d) "OIG-RCC-7, Request for Appeal", edition 12/07].

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

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 13, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 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, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for a certified family child-care home.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for certified family child-care homes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of standards for certification as a family child-care home.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a certified family child-care home.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the standards for a certified family child-care home with more recently enacted state laws (i.e., new requirements with regard to

evacuation planning, training on pediatric abusive head trauma); federal regulations regarding cribs, play pens, and play yards; and related administrative regulations in Title 922 KAR Chapter 2 and their concurrent amendment. Standards across child-care provider types have been aligned with regard to required health considerations and background checks, including checks of the Sex Offender Registry; care requirements of a child; incident reporting to the cabinet; records; and common terminology. In addition, the amendment to this administrative regulation clarifies initial application and renewal requirements for certified providers, including adding a provision to allow an unannounced annual cabinet inspection; and criteria for denial, suspension, or revocation of certification to include non-cooperation with unannounced inspections by the cabinet, unsatisfactory results from background checks, and non-compliance with corrective action plans. The amendment aligns care requirements (e.g., care of a child with special needs, food services, provision of medication, safety and environmental precautions, contact with animals, transportation of children, program planning, hygiene, emergency drills, and sleeping and napping) congruent with recommendations from national groups and in-state stakeholders. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary as a result of the enactment of KRS 199.895 governing evacuation plan requirements for certified family child-care homes, amendment to KRS 199.8982 regarding child-care provider training, and new federal regulations pertaining to cribs; amendments to related administrative regulations in Title 922 KAR Chapter 2; and inputs solicited from stakeholders and gained through research since the administrative regulation's adoption.

(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 standards for a certified family child-care home.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of certified family child-care home standards in conformity with state law and expert recommendations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for a certified family child-care home or an existing provider will be impacted by this administrative regulation. As of June 30, 2012, there were 613 Kentucky certified family child-care providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation incorporates recently enacted state law, specifically new evacuation plan and training requirements. Other requirements have been streamlined and made clearer and more consistent across provider types. Actions of the same caliber as present actions will be required of applicants and certified family child-care homes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will entail minimal, if any, new costs to new applicants or existing certified family child-care homes. The Department for Community Based Services (DCBS) assessed all suggested changes to the administrative regulation to avoid a negative fiscal impact to new or existing child-care providers. In addition, DCBS has partnered with various stakeholders to facilitate quality evacuation plan development and to develop free online trainings and a free online evacuation plan template for providers to reduce workload burden that may be associated with the more newly enacted statutes.

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

entities identified in question (3): Applicant and existing certified family child-care providers and the children in their care will benefit from greater emergency preparedness, more streamlined and clear application and renewal requirements, and greater consistency in standards across child-care provider types.

(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: The Child Care and Development Fund Block Grant, state match for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2, 49 C.F.R. 571.213, 42 U.S.C. 7181-7184

2. State compliance standards. KRS 194A.050(1), 199.8982(1)(f)

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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 98.2, 49 C.F.R. 571.213, 42 U.S.C. 7181-7184, KRS 194A.050(1), 199.8982(1)(f)

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

(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? 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:

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

**922 KAR 2:110. Child-care center provider requirements.**

RELATES TO: KRS 17.165, 17.500–17.580, 199.011(2), 199.894(3), 199.896[(2), (40), (41), (45)–(20)], 199.897, 199.898, 214.010, 214.036, 314.011(5), 620.020(8), 620.030, 45 C.F.R. 98.2

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. This administrative regulation establishes standards for child-care centers.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.011(2).

(3)[(2)] "Child care" means care of a child in a center or home which regularly provides full or part-time care, day or night, and includes developmentally appropriate~~developmentally appropriate~~ play and learning activities.

(4)[(3)] "Child-care center" is defined by KRS 199.894(3)

(5)[(4)] "Director" means an individual who meets the education and training requirements as specified in Section 4 of this administrative regulation.

(6)[(5)] "Health professional" means a person actively licensed as a:

- (a) Physician;
- (b) Physician's assistant;
- (c) Advanced registered nurse practitioner; or
- (d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(7)[(6)] "Infant" means a child who is less than twelve (12) months of age.

(8)[(7)] "Licensee" means the owner and operator of a child-care center to include:

- (a) Sole proprietor;
- (b) Corporation;
- (c) Limited liability company;
- (d) Partnership;
- (e) Association; or
- (f) Organization, such as:
  - 1. Board of education;
  - 2. Private school;
  - 3. Faith based organization;
  - 4. Government agency; or
  - 5. Institution~~[an individual, partnership, corporation, or other entity authorized to operate a child-care center].~~

(9)[(8)] "Parent" is defined by 45 C.F.R. 98.2.

(10)[(9)] "Parental or family participation" means a child-care center's provision of information or inclusion of a child's parent in the child-care center's activities such as:

- (a) Distribution of a newsletter;
- (b) Distribution of a program calendar;
- (c) A conference between the provider and a parent; or
- (d) Other activity designed to engage a parent in the program's activities.

(11) "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(12)[(40)] "Premises" means the building and contiguous property in which child care is provided.

(13) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(14)[(41)] "Qualified substitute" means a person who meets the requirements of a staff person as described in Section 5 of this administrative regulation.

(15)[(42)] "School-age" means a child attending kindergarten, elementary, or secondary education.

(16) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(17)[(43)] "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months.

(18)[(44)] "Type I child-care center" means a child-care center licensed to regularly provide child care services for:

- (a) Four (4) or more children in a nonresidential setting; or
- (b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.

(19)[(45)] "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. General. (1) A licensee shall be responsible for the operation of the child-care center pursuant to this administrative regulation, 922 KAR 2:090, and 922 KAR 2:120.

(2) Child-care center staff shall be:

- (a) Instructed by the child-care center's director regarding requirements for operation; and
- (b) Provided with a copy of this administrative regulation, 922 KAR 2:090, and 922 KAR 2:120.

(3) Information concerning a child or the child's parent shall be kept in strict confidence by child-care center staff, except as otherwise required by law.

(4) A volunteer or board member shall comply with the policies and procedures of the child-care center.

(5) Program policies and procedures shall:

- (a) Be in writing; and
- (b) Include:
  - 1. Staff policies;
  - 2. Job descriptions;
  - 3. An organization chart;
  - 4. Chain of command; and
  - 5. Other procedures necessary to ensure implementation of:
    - a. KRS 199.898, Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;
    - b. 922 KAR 2:090, Child-care center licensure;
    - c. 922 KAR 2:120, Child-care center health and safety standards; and
    - d. This administrative regulation.

(6) An activity of a person living in a child-care center that is a dwelling unit shall not interfere with the child-care center program.

(7) In addition to the posting requirement of KRS 199.898(3), a child-care center shall post the following in a conspicuous place and make available for public inspection:

- (a) Each statement of deficiency and civil ~~[monetary]~~ penalty notice issued by the cabinet during the current licensure year;
- (b) Each plan of correction submitted by the child-care center to the cabinet during the current licensure year;
- (c) Information on the Kentucky Consumer Product Safety

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

Program and the program's Web site as specified in KRS 199.897:

(d) A description of services provided by the child-care center, including:

1. Current rates for child care; and
2. Each service charged separately and in addition to the basic rate for child care;[;]

(e)[(d)] Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and

(f)[(e)] Daily schedule.

(8) If a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with a child in care is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the family-in-need-of-services assessment or investigation; and

(b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

Section 3. Records. (1) A child-care center shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;

(b) A written record for each child:

1. Completed and signed by the child's parent;

2. Retained on file on the first day the child attends the child-care center; and

3. To contain:

a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;

b. Contact information to enable a person in charge to contact the child's:

(i) Parent at the parent's home or place of employment;

(ii) Family physician; and

(iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. The child's general health status and medical history including, if applicable:

(i) Allergies;

(ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and

(iii) Permission from the parent for third-party professional services in the child-care center;

e. The name and phone number of each person to be contacted in an emergency situation involving or impacting the child;

f. Authorization by the parent for the child-care center to seek emergency medical care for the child in the parent's absence; and

g. A permission form for each trip off the premises signed by the child's parent in accordance with 922 KAR 2:120, Section 12;

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the child-care center through the Child Care Assistance Program;

(d) A written schedule of staff working hours;

(e) A current personnel file for each child-care center staff person to include:

1. Name, address, date of birth, and date of employment;

2. Proof of educational qualifications;

3. Record of annual performance evaluation;

4. Written record of training participation to include:

a. The training source;

b. Location;

c. Date; and

d. Number of clock hours completed;

5. Every two (2) years, a:

a. Statement from a health professional that the individual is free of active tuberculosis; or

b. Copy of negative tuberculin results; and

6. For a director, employee, volunteer, or any person with su-

pervisory or disciplinary control over, or having unsupervised contact with, a child in care, the results of a:

a. Child abuse or neglect check using the central registry in accordance with 922 KAR 1:470;

b. Criminal records check required by KRS 199.896(19);

c. Criminal records check from any previous state of residence completed once if:

(i) The individual resided outside the state of Kentucky in the last five (5) years; and

(ii) No criminal records check has been completed for the individual's previous state of residence; and

d. An address check of the Sex Offender Registry;

(f) A written annual plan for child-care staff professional development;

(g) A written evacuation plan in accordance with 922 KAR 2:090, Section 5, and KRS 199.895;

(h) A written record of quarterly practiced earthquake drills and tornado drills detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;

(i) A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;

(j) A written plan and diagram outlining the course of action in the event of a natural or manmade disaster, posted in a prominent place;

(k) A written record of reports to the cabinet required in Section 6 of this administrative regulation; and

(l) A written record of transportation services provided in accordance with 922 KAR 2:120, Section 12.

(2) A child-care center shall:

(a) Maintain the confidentiality of a child's record;

(b) Maintain all records for five (5) years; and

(c) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(4). The following records shall be maintained at the child-care center for five (5) years:

(1) Sufficient records to:

(a) Identify each child enrolled in the child-care center; and

(b) Enable the person in charge to contact each child's:

1. Parent at:

a. Home; or

b. Place of employment; and

2. Family physician; and

(c) Identify the name of each person designated in writing by the parent to pick-up the child;

(2) Each child's medical history, along with authorization for emergency medical care, signed by the parent and left with the child-care center director at the time of enrollment;

(3) Except as provided in KRS 214.036, a current immunization certificate showing that the child is immunized pursuant to 902 KAR 2:060, placed on file within thirty (30) days of enrollment;

(4) Permission forms for each trip off the premises signed by the parent;

(5) Daily attendance records documenting the arrival and departure time of each child;

(6) A written schedule of staff working hours;

(7) A Written record of training participation for each child-care center staff person, to include:

(a) The training source;

(b) Location;

(c) Date; and

(d) Number of clock hours completed;

(8) A written annual plan for child-care staff professional development;

(9) A written record of quarterly, practiced earthquake and tornado drills detailing the date, time, and children who participated;

(10) A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated;

(11) A written plan and diagram outlining the course of action in the event of natural or manmade disaster, posted in a prominent place;

(12) For the director, employee, volunteer, or any person with supervisory or disciplinary control over, or having direct contact

with a child, results of the:

- (a) Criminal records check in accordance with KRS 17.165;
- (b) Child abuse and neglect check in accordance with 922 KAR 1:470; and
- (c) Background check from:
  1. Previous state of residence, if the individual has been a resident outside of Kentucky in the previous five (5) years; or
  2. Current state of residence, if other than Kentucky; and
- (13) A written record of reports to the cabinet required in Section 6(1) of this administrative regulation.

Section 4. Director Requirements and Responsibilities. (1) Effective with the adoption of this administrative regulation, a director shall:

- (a) Be twenty-one (21) years of age;
- (b) Have a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;
- (c) Not be employed in a position other than an on-site child care director, or director of multiple facilities, during the hours the child-care center is in operation; and
- (d) Ensure:
  1. Compliance with 922 KAR 2:090, 922 KAR 2:120, and this administrative regulation; and
  2. The designation of one (1) adult staff person in charge to carry out the director's duties if the director is not present in the child-care center during operating hours;
- (e) Manage the staff in their individual job descriptions;
- (f) Develop child-care center plans, policies, and procedures;
- (g) Supervise staff conduct to ensure implementation of program policies and procedures;
- (h) Post a schedule of daily activities, to include dates[lists] and times[dates] of activities to be conducted with the children in each classroom;
- (i) Conduct, manage, and document in writing staff meetings;
- (j) Assess each staff person's interaction with children in care and classroom performance through an annual written performance evaluation;
- (k) Assure that additional staff are available during cooking and cleaning hours, if necessary, to maintain staff-to-child ratios pursuant to 922 KAR 2:120;
- (l) Provide for the health, safety, and comfort of each child;
- (m) Notify the parent immediately of an accident or incident requiring medical treatment of a child;
- (n) Assure that a person acting as a caregiver of a child in care shall not be left alone with a child, if the licensee has not received the results of the background checks as described in Section 3(1)(e)6 of this administrative regulation[:];
  1. ~~Criminal records check required by KRS 199.896(19); and~~
  2. ~~Child abuse or neglect check in accordance with 922 KAR 1:470;~~
- (o) Assure each mandatory record specified in Section 3 of this administrative regulation has not been altered or falsified; and
- (p) Coordinate at least one (1) annual activity involving parental or family participation.
- (2) The director of a Type I child-care center shall meet one (1) of the following educational requirements:
  - (a) Master's degree in Early Childhood Education and Development;
  - (b) Bachelor's degree in Early Childhood Education and Development;
  - (c) Master's degree or a bachelor's degree in a field other than Early Childhood Education and Development, including a degree in pastoral care and counseling, plus twelve (12) clock hours of child development training;
  - (d) Associate degree in Early Childhood Education and Development;
  - (e) Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and two (2) years of verifiable full-time paid experience working directly with children in[:];
  - (f) A Director's Credential in Early Childhood Development and one (1) year of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;
  2. An early childhood development program, such as Head Start; or
  3. A licensed or certified child care program;
- (g) Child development associate plus one (1) year of verifiable paid experience working directly with children in:
1. A school-based program following Department of Education guidelines;
  2. An early childhood development program (head start); or
  3. A licensed or certified child-care program; or
- (h) Three (3) years of verifiable full-time paid experience working directly with children in:
1. A school-based program following Department of Education guidelines;
  2. An early childhood development program, such as Head Start; or
  3. A licensed or certified child-care program.
- (3) The director of a Type II child-care center shall:
- (a) Meet the requirements in subsection (2) of this section; or
  - (b) Meet two (2) of the following:
    1. Have twelve (12) hours of orientation and child development training;
    2. Have one (1) year of verifiable full-time paid experience working directly with children in:
      - a. A school-based program following Department of Education guidelines;
      - b. An early childhood development program, such as Head Start; or
      - c. A licensed or certified child-care program; or
    3. Obtain six (6) additional hours of training in child day care program administration.

Section 5. Staff Requirements. (1) Child-care center staff[:];

- (a) Hired after January 1, 2009, who have supervisory power over a minor and are not enrolled in secondary education, shall have a:
  1. High school diploma;
  2. GED or qualifying documentation from a comparable educational entity; or
  3. Commonwealth Child Care Credential as described in 922 KAR 2:250; and
- (b) Shall provide, prior to employment and every two (2) years thereafter:
  1. A statement from a health professional that the individual is free of active tuberculosis; or
  2. A copy of negative tuberculin results[the results of a negative tuberculin skin test].
- (2) A child-care center shall not employ a person:
  - (a) Convicted of a crime pursuant to KRS 17.165[:](5);[or]
  - (b) Found by the cabinet to have abused or neglected a child, pursuant to 922 KAR 1:470;
  - (c) Convicted of a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;
  - (d) Placed on the Sex Offender Registry; or
  - (e) Determined by a physician to have a health condition that renders the person unable to care for children.
- (3) For a child-care center licensed for infant, toddler, or pre-school-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:
  - (a) Infant and child cardiopulmonary resuscitation; and
  - (b) Infant and child first aid.
- (4) For a child-care center licensed for school-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:
  - (a) Adult cardiopulmonary resuscitation; and
  - (b) First aid.
- (5) Cardiopulmonary[Infant and child cardiopulmonary] resuscitation (CPR) and first aid training shall be in addition to the fifteen (15) clock hours requirement in subsection (14) of this section.[:](5) One (1) adult staff person shall be designated as being in charge.

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

If the director is not present in the child-care center, the designated staff person in charge shall carry out the duties of the director.]

(6) Child-care centers shall have available in case of need:

(a) One (1) qualified substitute staff person for a Type II child-care center; or

(b) Two (2) qualified substitute staff persons for a Type I child-care center.

(7) Each qualified substitute staff person shall:

(a) Meet the staff requirements of this administrative regulation; and

(b) Provide the required documentation to verify compliance with this administrative regulation.

(8) A qualified substitute who works in more than one (1) licensed child-care center shall provide the required documentation to verify compliance with this administrative regulation at the time of employment with each child-care center.

(9) If the operator of a Type II child-care center is unable to provide care in accordance with this administrative regulation, 922 KAR 2:090, or 922 KAR 2:120, the Type II child-care center shall close temporarily until the operator is able to resume compliance.[:]

(10) The minimum number of adult workers in a child-care center shall be sufficient to ensure that:

(a) Minimum staff-to-child ratios in accordance with 922 KAR 2:120 are followed;

(b) Each staff person under eighteen (18) years of age and each student trainee are under the direct supervision of a qualified staff person who meets the requirements of this section; and

(c) Unless providing care with a qualified staff person, a person under the age of eighteen (18) shall not be counted as staff for the staff-to-child ratio.

(11) Except for medication as prescribed by a physician, a controlled substance or alcohol use shall not be permitted on the premises during hours of operation.

(12) Each staff person shall remain awake while on duty except as specified in 922 KAR 2:120, Section 2(11)(f).

(13)(a) For each adult residing at a Type II child-care center, the results of the following shall be maintained on file at the center:

1. ~~[(a)]~~ Criminal records check indicating that the adult has not been convicted of a:

a. Crime pursuant to KRS 17.165~~[(5)]~~; or

b. Drug-related felony, and five (5) years have not lapsed since the person was fully discharged from imprisonment, probation, or parole;

2. ~~[(b)]~~ Child abuse and neglect check using the central registry~~[(checks)]~~ in accordance with 922 KAR 1:470, indicating that the adult has not been found by the cabinet to have abused or neglected a child;

3. A criminal records check for any previous state of residence completed once if:

a. The adult resided outside the state of Kentucky in the last five (5) years; and

b. No criminal records check has been completed for the adult's previous state of residence; and

4. ~~[(c)]~~ A copy of negative tuberculin results ~~[the results of a negative tuberculosis skin test]~~ or a health professional's statement documenting that the adult is free of tuberculosis. Every two (2) years, the adult shall provide negative tuberculin results~~[evidence of a negative tuberculosis skin]~~ or health professional's statement documenting that the adult is free of tuberculosis.

(b) An address check of the Sex Offender Registry conducted on behalf of the applicant for a Type II child-care center and supporting documentation shall indicate that no individual residing in the household is a registered sex offender.

(14) In accordance with KRS 199.896(15) and (16), a staff person with supervisory authority over a child shall complete the following:

(a) Six (6) hours of cabinet-approved orientation within the first three (3) months of employment;

(b) Nine (9) hours of cabinet-approved early care and education~~[child development]~~ training within the first year of employment, including one and one-half (1 1/2) hours of pediatric abusive head trauma training; and

(c) Fifteen (15) hours of cabinet-approved early care and education training during each subsequent year of employment, includ-

ing one and one-half (1 1/2) hours of pediatric abusive head trauma training completed once every five (5) years.

(15) A staff person's compliance with the requirement for pediatric abusive head trauma training specified in subsection (14) or other training requirements of this section may be verified through the cabinet-designated database maintained pursuant to 922 KAR 2:240.

Section 6. Reports. (1) The following shall be reported to the cabinet or designee and other agencies specified in this section within twenty-four (24) hours from the time of discovery:

(a) Communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

(b) An accident or injury to a child that requires medical care;

(c) An incident that results in legal action by or against the child-care center that affects a child or staff person;~~or~~

(d) An incident involving fire or other emergency;or

(e) A report of child abuse or neglect that:

1. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

2. Names a director, employee, volunteer, or person with supervisory or disciplinary control over, or having unsupervised contact with a child in care as the alleged perpetrator.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee shall report to the cabinet within one (1) week:

(a) Any resignation, termination, or change of director; and

(b) The name of the acting director who satisfies the requirement of Section (4) of this administrative regulation.

(4) Written notification of the following shall be made to the cabinet to allow for approval before implementation:

(a) Change of ownership;

(b) Change of location;

(c) Increase in capacity;

(d) Change in hours of operation;

(e) Change of services in the following categories:

1. Infant;

2. Toddler;

3. Preschool-age~~Two (2) years to school-age~~;

4. School-age;

5. Nontraditional hours; or

6. Transportation; or

(f) Addition to the square footage a child-care center's premises.

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6) The cabinet and the parent of a child enrolled in a child-care center shall receive notice as soon as practicable, and prior to, a child-care~~[child-care]~~ center's temporary or permanent closure.

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 13, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 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

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

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 standards for caregivers in licensed child-care centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for a caregiver in a licensed child-care center.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing standards for caregivers in a licensed child-care center.

(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 standards for a caregiver in a licensed child-care center.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the standards for a child-care center with more recently enacted state laws (i.e., new requirements with regard to evacuation planning, training on pediatric abusive head trauma, and consumer product safety notice) and related administrative regulations in Title 922 KAR Chapter 2 and their concurrent amendment. Standards across child-care provider types have been aligned with regard to required health considerations and background checks, including checks of the Sex Offender Registry; care requirements for a child; record and reporting requirements; and common terminology. The amendment to this administrative regulation differentiates the cardiopulmonary resuscitation requirements based on the age of a child in care and clarifies personnel requirements. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary as a result of the enactment of KRS 199.895 governing evacuation plan requirements for child-care centers, KRS 199.897 governing product safety information, and amendment to KRS 199.896 regarding child-care provider training; amendments to related administrative regulations in Title 922 KAR Chapter 2; and inputs solicited from stakeholders and gained through research since the administrative regulation's adoption.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to this administrative regulation conform to the content of the authorizing statutes through its update and clarification of caregiver requirements for licensed child-care centers.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of licensed child-care centers' caregiver standards in conformity with state law and expert recommendations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child-care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of June 30, 2012, there were 2,315 Kentucky licensed child-care centers.

(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: 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: Standards across child-care provider types have been aligned with regard to required health considerations and background checks, including checks of the Sex Of-

fender Registry; care requirements for a child; and common terminology. The amendment to this administrative regulation differentiates the cardiopulmonary resuscitation requirements based on the age of a child in care and clarifies posting and personnel record 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 will entail minimal, if any, new costs to new applicants or existing licensed child-care centers. The Department for Community Based Services (DCBS) assessed all suggested changes to the administrative regulation to avoid a negative fiscal impact to new or existing child-care providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and licensed child-care centers and the children in their care will benefit from the congruency with state statutes, clarified compliance expectations, and greater consistency in standards across child-care provider types.

(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: The Child Care and Development Fund Block Grant, state match for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2

2. State compliance standards. KRS 194A.050(1), 199.896(2)

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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 98.2, KRS 194A.050(1), 199.896(2)

(3) Estimate the effect of this administrative regulation on the

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? 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:

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

**922 KAR 2:120. Child-care~~[Child-child-care]~~ center health and safety standards.**

RELATES TO: KRS Chapter 151, Chapter 186, 189.125, 199.894(1), 199.896(2), (18), (19), 199.898, 211.350-211.380, Chapter 217, 227.220, Chapter 318, 314.011(5), 527.070(1), 620.030, 16 C.F.R. 1219, 1220, 1221~~[1508, 1509]~~, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 42 U.S.C. 7181-7184

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, quality for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. This administrative regulation establishes health and safety standards for child-care centers.

Section 1. Definitions. (1)~~["Adequate supervision" means that qualified staff devotes full-time attention to a child in care and ensures the child is within scope of vision and range of voice.~~

(2)~~["Cabinet" is defined by KRS 199.894(1).~~

(2) "Corporal physical discipline" is defined by KRS 199.896(18).

(3) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(4)~~[(3)] "Director" means an individual:~~

(a) Who meets the education and training requirements as specified in 922 KAR 2:110, Section 4;

(b) Whose primary full-time job responsibilities are to ensure compliance with 922 KAR 2:090, 922 KAR 2:110, and this administrative regulation; and

(c) Who is responsible for directing the program and managing the staff at the child-care center.

(5)~~[(4)] "Health professional" means a person currently licensed as a:~~

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner; or

(d) Registered nurse as defined in KRS 314.011(5) under the supervision of a physician.

(6)~~[(5)] "Infant" means a child who is less than twelve (12) months of age.~~

(7)~~[(6)] "Licensee" means the owner and operator of a child-care center to include:~~

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education;

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution~~[an individual, partnership, corporation, or other entity authorized to operate a child-care center].~~

(8)~~[(7)] "Nontraditional hours" means the hours of:~~

(a) 7~~[6]~~ p.m. through 5~~[6]~~ a.m. Monday through Friday; or

(b) 7~~[6]~~ p.m. on Friday until 5~~[6]~~ a.m. on Monday.

(9)~~[(8)] "Parent" is defined in 45 C.F.R. 98.2.~~

(10)~~[(9)] "Premises" means the building and contiguous property in which child care is provided.~~

(11) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(12)~~[(10)] "Protective surface" means loose surfacing material not installed over concrete which includes the following:~~

(a) Wood mulch;

(b) Double shredded bark mulch;

(c) Uniform wood chips;

(d) Fine sand;

(e) Coarse sand;

(f) Pea gravel, except for areas used by children under three (3) years of age;

(g) Certified shock absorbing resilient material; or

(h) Other material approved by the cabinet or designee.

(13)~~[(11)] "Related" means having one (1) of the following relationships with the operator of the child-care~~[child-care]~~ center:~~

(a)~~[(1)]~~ Child;

(b)~~[(2)]~~ Grandchild;

(c)~~[(3)]~~ Niece;

(d)~~[(4)]~~ Nephew;

(e)~~[(5)]~~ Sibling;

(f)~~[(6)]~~ Stepchild; or

(g)~~[(7)]~~ Child in legal custody of the operator.

(14)~~[(12)] "School-age" means a child attending~~[enrolled in]~~ kindergarten, elementary, or secondary education.~~

(15)~~[(13)] "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months.~~

(16) "Transition" means the changing from one (1) child care arrangement to another.

(17) "Transition plan" means a document outlining the process to be used in moving a child from one (1) child care arrangement to another.

(18)~~[(14)] "Type I child-care center" means a child-care center licensed to regularly provide child care services for:~~

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.

(19)~~[(15)] "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.~~

Section 2. Child Care Services. (1) Services described in this administrative regulation shall be maintained during all hours of operation that child care is provided.

(2) Minimum staff-to-child ratios and group size for an operating child-care center shall be maintained as follows:



**VOLUME 39, NUMBER 4 – OCTOBER 1, 2012**

Age of Children	Ratio	Maximum Group Size*
Infant	1 staff for 5 children	10
Toddler	1 staff for 6 children	12
<u>Preschool-age</u> 2 to 3 years	1 staff for 10 children	20
<u>Preschool-age</u> 3 to 4 years	1 staff for 12 children	24
<u>Preschool-age</u> 4 to 5 years	1 staff for 14 children	28
<u>School-age</u> 5 to 7 years	1 staff for 15 children	30
<u>School-age</u> 7 and older	1 staff for 25 children (for before and after school)	30
	1 staff for 20 children (full day of care)	30

\*Maximum Group Size shall be applicable only to Type I child-care centers.

(a) In a Type I child-care center, a group size shall:

1. Be separately maintained in a defined area unique to the group; and
2. Have specific staff assigned to, and responsible for, the group.

(b) The age of the youngest child in the group shall determine the:

1. Staff-to-child ratio; and
2. Maximum group size.

(c) This subsection and subsection (9) of this section shall not apply during normal school hours to a center:

1. Providing early childhood education to mixed-age groups of children whose ages range from two and one-half (2 1/2) years to six (6) years; and

2. Accredited by or affiliated with a nationally-recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.

(d) If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the center, the child shall be included in the staff-to-child ratio.

(3)(a) Each center shall maintain a child-care[~~child-care~~] program that assures each child will be:

1. Provided with adequate supervision at all times by a qualified staff person who:

a. Ensures the child is within scope of vision and range of voice; or

b. For a school-age child, within scope of vision or range of voice; and

2. Protected from abuse or neglect.

(b) The program shall include:

1. A procedure to inform child care staff of the laws of the Commonwealth pertaining to child abuse or neglect set forth in KRS 620.030; and

2. Written policy that specifies that the procedures that were taught at the orientation training shall be implemented by each child-care center staff member.

(4) The child-care center shall provide a daily planned program[~~of activities~~]:

(a) Posted in writing in a conspicuous location with each age group and followed;

(b) Of activities that are individualized and developmentally appropriate for[~~geared to the individual needs and developmental levels of~~] each child served;

(c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) That offers a variety of creative activities including the following:

1. Art;
2. Music;
3. Dramatic play;
4. Stories and books;

5. Science;
6. Block building;
7. Tactile activity;
8. Culture;
9. Indoor or outdoor play in which a child makes use of both small and large muscles;
10. A balance of active and quiet play, including group and individual activity;
11. An opportunity for a child to:
  - a. Have some free choice of activities;
  - b. If desired, play apart from the group at times; and
  - c. Practice developmentally appropriate[~~developmentally-appropriate~~] self-help procedures in respect to:
    - (i) Clothing;
    - (ii) Toileting;
    - (iii) Hand-washing; and
    - (iv) Eating; and
  12. Use of electronic viewing and listening devices if the:
    - a. Material is appropriate to the child using the equipment;
    - b. Material does not include any violence, adult content viewing, or inappropriate language;
    - c. Viewing or individual listening is limited to two (2) hours per day;
    - d. Viewing or listening is discussed with parents prior to viewing or listening; and
    - e. Viewing or listening is designed as an educational tool.
- (5) A child who does not wish to use the electronic devices during the planned program shall be offered other appropriate activities.
- (6) Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.
- (7) Sufficient time shall be allowed for an activity so that a child may progress at their own developmental rate.
- (8) A child shall not be required to stand or sit for a prolonged period of time:
  - (a) During an activity;
  - (b) While waiting for an activity to start; or
  - (c) As punishment.
- (9) If school-age care is provided:
  - (a) A separate area or room shall be provided in a Type I child-care center; and
  - (b) Each child shall be provided a snack after school.
- (10) A child shall not be subjected to:
  - (a) Corporal physical discipline pursuant to KRS 199.896(18);
  - (b) Loud, profane, threatening, frightening, or abusive language; or
  - (c) Discipline that is associated with:
    1. Rest;
    2. Toileting; or
    3. Food.
- (11) If nontraditional hours of care are provided:
  - (a) Including time spent in school, a child shall not be permitted to spend more than sixteen (16) hours in the child-care center during one (1) twenty-four (24) hour period;
  - (b) At least one (1) staff member shall be assigned responsibility for each sleeping room;
  - (c) A child present for an extended period of time during waking hours shall receive a program of well-balanced and constructive activity that are developmentally appropriate for the child[~~geared to the child's age level and developmental needs~~];
  - (d) A child sleeping three (3) hours or more shall sleep in:
    1. Pajamas; or
    2. A nightgown;
  - (e) If a child attends school from the child-care center, the child shall be offered breakfast; and
  - (f) Staff shall:
    1. If employed by a Type I child-care center, remain awake while on duty; or
    2. If employed by or is the operator of a Type II child-care center, remain awake until every child in care is asleep.
- (12) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

Section 3. General Requirements. (1) Electronic viewing and listening devices shall only be used in the center as a part of the child's planned program of activity described in Section 2(4) of this administrative regulation[(d)].

(2) Activity areas, equipment, and materials shall be arranged so that the child's activity can be given adequate supervision by staff.

(3) Computer equipment shall be equipped with a monitoring device which limits access by a child to items inappropriate for a child to view or hear.

(4) A child shall:[]

(a) Be helped with personal care and cleanliness based upon their developmental skills; and

(b) Wash his or her hands with liquid soap and warm running water:

1. a. Upon arrival at the center; or  
b. Within thirty (30) minutes of arrival for school-age children;
2. Before and after eating or handling food;
3. After toileting or diaper change;
4. After handling animals;
5. After wiping or blowing nose;
6. After touching items soiled with body fluids or wastes; and
7. After outdoor or indoor play time.

(5) Staff shall:

- (a) Maintain personal cleanliness;
- (b) Conform to hygienic practices while on duty; and
- (c) Wash their hands with liquid soap and running water:
  1. Upon arrival at the center;
  2. After toileting or assisting a child in toileting;
  3. Before and after diapering each child;
  4. After wiping or blowing a child's or own nose;
  5. After handling animals;
  6. After caring for a sick child;
  7. Before and after feeding a child or eating;
  8. Before dispensing medication; and
  9. If possible, before administering first aid.

(6) A staff person suspected of being infected with a communicable disease shall:

(a) Not perform duties that may allow for the transmission of the disease until the infectious condition can no longer be transmitted; and

(b) Provide a statement from a health professional, if requested.

(7) Except in accordance with subsection (8) of this section, the following shall be inaccessible to a child in care:

- (a) Toxic cleaning supplies, poisons, and insecticides;
- (b) Knives and sharp objects;
- (c) Matches, cigarettes, lighters, and flammable liquids;
- (d) Plastic bags;
- (e) Litter and rubbish;
- (f) Bar soap; and
- (g) Personal belongings and medications of staff.

(8) The following shall be inaccessible to a child in care unless under direct supervision and part of planned program of instruction:

- (a) Knives and sharp objects;
- (b) Litter and rubbish; and
- (c) Plastic bags not used for personal belongings.

(9) In accordance with KRS 527.070(1), firearms[Guns] and ammunition shall be stored separately in a locked area outside of the designated child care area.

(10)[(9)] Smoking shall:

- (a) Be permitted in accordance with local ordinances;
- (b) Be allowed only in outside designated areas; and
- (c) Not be permitted in the presence of a child.

(11)[(10)] While bottle feeding an infant, the:

- (a) Child shall be held; and
- (b) Bottle shall not be:
  1. Propped;
  2. Left in the mouth of a sleeping infant; or
  3. Heated in a microwave.

(12) A fire drill shall be conducted during hours of operation:

- (a) At least monthly; and
- (b) Documented.

(13) An earthquake drill and a tornado drill shall be conducted

during hours of operation:

(a) At least quarterly; and

(b) Documented.[(11) Except for an infant, toddler, or a child who attends nontraditional hours of care, a child shall have rest periods not to exceed two (2) hours. A child who does not sleep shall be permitted to play quietly after a reasonable rest period specific to the needs of the child.]

[(12) Staff in a child-care center shall follow the most current policy of the American Academy of Pediatrics, located at <http://www.aap.org/>, when placing a child to sleep.]

Section 4. Premises Requirements. (1) The premises shall be:

- (a) Suitable for the purpose intended;
- (b) Kept clean and in good repair; and
- (c) Equipped with a working land-line telephone accessible to a room used by a child.

(2) A child-care center shall be in compliance with the State Fire Marshal requirements established in KRS 227.220 and the local zoning laws.

(3) Fire and emergency exits shall be kept clear of debris.

(4) A working carbon monoxide detector shall be required in a licensed child-care center that is in a home if the home:

- (a) Uses fuel burning appliances; or
- (b) Has an attached garage.

(5) The building shall be constructed to ensure the:

- (a) Building is:
  1. Dry;
  2. Adequately heated;
  3. Ventilated; and
  4. Well lit, including clean light fixtures that are:
    - a.[That are] In good repair in all areas; and
    - b. Shielded or have shattered proof bulbs installed; and
- (b) Following are protected:
  1. Windows;
  2. Doors;
  3. Stoves;
  4. Heaters;
  5. Furnaces;
  6. Pipes; and
  7. Stairs.

(6)[(5)] Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child.

(7)[(6)] Measures shall be utilized to control the presence of:

- (a) Rodents;
- (b) Flies;
- (c) Roaches; and
- (d) Other vermin.

(8)[(7)] An opening to the outside shall be effectively protected against the entrance of vermin by:

- (a) Self-closing doors;
- (b) Closed windows;
- (c) Screening;
- (d) Controlled air current; or
- (e) Other effective means.

(9)[(8)] Floors, walls, and ceilings shall be smooth, in good repair, and constructed to be easily cleaned.

(10)[(9)] The water supply shall be:

- (a) Potable;
- (b) Protected from contamination;
- (c) Adequate in quality and volume;
- (d) Under sufficient pressure to permit unrestricted use; and
- (e) Obtained from an approved public water supply or a source approved by the local health department.

(11)[(10)] Groundwater supplies for a child-care center caring for:

- (a) More than twenty-five (25) children shall meet the specifications of the Cabinet for Environmental and Public Protection Division of Water, established in KRS Chapter 151; or
- (b) Twenty-five (25) children or less shall secure approval from the:

1. Cabinet for Environmental and Public Protection; or
2. Local health department.

(12)[(11)] Sewage shall be properly disposed by a method

approved by the:

- (a) Cabinet for Environmental and Public Protection; or
- (b) Cabinet.

(13)[(12)] All plumbing shall comply with the State Plumbing Code established in KRS Chapter 318[211-3470].

(14)[(13)] Solid waste shall be kept in a suitable receptacle in accordance with local, county and state law, as governed by KRS 211.350 to 211.380.

(15)[(14)] If a portion of the building is used for a purpose other than child care, necessary provisions shall be made to avoid interference with the child-care[child-care] program.

(16)[(15)] The temperature of the inside area of the premises shall be:

- (a) Sixty-five (65) to seventy-five (75) degrees Fahrenheit during the winter; or
- (b) Sixty-eight (68) to eighty-two (82) degrees Fahrenheit during the summer months.

(17) Outdoor activity shall be restricted based upon:

- (a) Temperature;
- (b) Weather conditions; or

(d) Weather alerts, advisories, and warnings issued by the National Weather Service.

(18)[(16)] A kitchen shall not be required if:

- (a) The only food served is an afternoon snack to school-age children; and

(b) Adequate refrigeration is maintained.

(19)[(17)] The Department of Housing, Buildings and Construction, State Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.

(20)[(18)] An outdoor play area shall be:

(a) Except for an after-school child-care[child-care] program, located on the premises of a public or state-accredited nonpublic school, fenced for the safety of the children;

(b) A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6)[(5)] of this section;

(c) Free from:

- 1. Litter;
- 2. Glass;
- 3. Rubbish; and
- 4. Flammable materials;
- (d) Safe from foreseeable hazard;
- (e) Well drained;
- (f) Well maintained;
- (g) In good repair; and
- (h) Visible to staff at all times.

(21)[(19)] A protective surface shall:

(a) Be provided for outdoor play equipment used to:

- 1. Climb;
- 2. Swing; and
- 3. Slide; and
- (b) Have a fall zone equal to the height of the equipment.

(22)[(20)] If a child-care center does not have access to an outdoor play area, an indoor space shall:

- (a) Be used as a play area;
- (b) Have a minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6)[(5)] of this section;

(c) Include equipment for gross motor skills;

(d) Be well-ventilated;

(e) Be heated; and

(f) Have a protective surface of at least two (2) inches thick around equipment intended for climbing.

(23)[(21)] Fences shall be:

- (a) Constructed of safe material;
- (b) Stable; and
- (c) In good condition.

(24)[(22)] Supports for climbing apparatus and large equipment shall be securely fastened to the ground.

(25)[(23)] Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.

(26)[(24)] A sandbox shall be:

- (a) Constructed to allow for drainage;

(b) Covered when not in use;

(c) Kept clean; and

(d) Checked for vermin prior to use.

(27)[(25)] Bodies of water that shall not be utilized include:

- (a) Portable wading pools;
- (b) Natural bodies of water; and
- (c) Unfiltered, nondisinfected containers.

(28)[(26)] A child-care center shall have enough toys, play apparatus, and developmentally appropriate[age-appropriate developmental] materials to provide each child with a variety of activities during the day, as specified in Section 2 of this administrative regulation.

(29)[(27)] Storage space shall be provided:

(a) In the form of:

1. Shelves; or

2. Other storage device accessible [low open shelves accessible] to the children; and

(b) In sufficient quantity for each child's personal belongings [clothing].

(30)[(28)] Supplies shall be stored so that the adult can reach them without leaving a [the] child unattended.

Section 5. Infant and Toddler Play Requirements. (1) Infant and toddler inside areas shall:

(a) Be separate from an area used by an older child;

(b) Not be an exit or entrance; and

(c) Have adequate crawling space for an infant or toddler away from general traffic patterns of the center.

(2) Except in accordance with subsection (3) of this section, an infant or toddler shall[may] participate in an activity with an older child for no more than one (1) hour per day.

(3) A toddler may participate in an activity with an older child for more than one (1) hour per day if:

(a) The toddler is in transition to the pre-school age group;

(b) The toddler is twenty-one (21) months or older;

(c) Space for the toddler is available in the preschool-age group;

(d) The staff-to-child ratios and group sizes are maintained based on the age of the youngest child;

(e) The center has a procedure for listing a transitioning toddler on attendance records, including a specific day and time the toddler is with either age group; and

(f) The child care center has obtained the signature and approval of the toddler's parent on the toddler's transition plan.

(4) If a child-care center provides an outdoor play area for an infant or toddler, the outdoor area shall be:

(a) Shaded; and

(b) A separate area or scheduled at a different time than an older child.

(5) Playpens and play yards shall:

(a) Meet federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;

(b) Be manufactured for commercial use; and

(c) Not be used for sleeping or napping.

Section 6. Sleeping and Napping Requirements[Equipment].

(1) An infant shall sleep or nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(2) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(3) Rest time shall include adequate space specified by the child's age as follows:

(a) For an infant:

1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;

2. A firm crib mattress in good repair with a clean tight-fitted sheet that shall be changed:

a. Weekly; or

b. Immediately if it is soiled or wet;

3. No positioning device or monitor unless the device or monitor is required by the infant's parent or health professional;

4. No loose bedding; and

5. No toys or other items except the infant's pacifier; or

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(b) For a toddler or preschool-age child:

1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and

2. Bedding that is in good repair and is changed:

a. Weekly; or

b. Immediately if it is soiled or wet.

(4) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending the child-care center during nontraditional hours.

(5) A child who does not sleep shall be permitted to play quietly and shall be visually supervised.

(6) Cots, equipment, and furnishings used for sleeping and napping shall be spaced twelve (12) inches apart to allow free and safe movement by a person.

(7) If cots or mats are used, floors shall be free from:

(a) Drafts;

(b) Liquid substances;

(c) Dirt; and

(d) Dampness.

(8) Cots or mats not labeled for individual use by a child shall be sanitized after each use.

(9) Individual bedding shall be stored in a sanitary manner. [(1+)

An individual cot, crib, baby bed, or two (2) inch thick waterproof mat shall be provided for each a child in attendance for more than three and one-half (3 1/2) hours per day.

(2) A crib shall:

(a) Be equipped with a firm, comfortable waterproof mattress; and

(b) Meet the standards set forth in 16 C.F.R. 1508 and 1509.

(3) Individual sheets and covers shall be:

(a) Provided for a child;

(b) Laundered a minimum of once per week or more often, if necessary; and

(c) Stored in a sanitary manner.

(4) If cots or mats are used, floors shall be free from:

(a) Drafts;

(b) Liquid substances;

(c) Dirt; and

(d) Dampness.

(5) Cots, other equipment, and furnishings shall be spaced twelve (12) inches apart to allow free and safe movement by a person.

(6) A tiered crib shall not be used.

(7) Cots or mats not labeled for individual use by a child shall be sanitized after each use.

(8) Cots or mats shall not be ripped or torn.]

Section 7. First Aid and Medicine. (1) First aid supplies shall:

(a) Be available to provide prompt and proper first aid treatment;

(b) Be stored out of reach of a child;

(c) Be periodically inventoried to ensure the supplies are current;

(d) If reusable, be:

1. Sanitized; and

2. Maintained in a sanitary manner; and

(e) Include:

1. Liquid soap;

2. Adhesive bandages;

3. Sterile gauze;

4. Medical tape;

5. Scissors;

6. A thermometer;

7. Flashlight;

8. Cold pack;

9. First aid book;

10. Disposable gloves; and

11. A cardiopulmonary resuscitation mouthpiece protector.

(2) A child showing signs of an illness or condition that may be communicable shall not be admitted to the regular child-care [child care] program.

(3) If a child becomes ill while at the child-care center:

(a) The child shall be placed in a supervised area isolated from the rest of the children;

(b) The parent shall be contacted immediately; and

(c) Arrangements shall be made to remove the child from the child-care center as soon as practicable.

(4) Prescription and nonprescription medication shall be administered to a child in care:

(a) With a daily written request of the child's parent.

(b) According to the directions or instructions on the medication's label.

(5) [Prescription medication shall not be administered to a child in care, without a daily written request of the parent.

(5) Nonprescription medication:

(a) May be given to a child only with the written daily request of the:

1. parent; or

2. Person exercising custodial control of the child; and

(b) Shall be administered according to the instructions on the label.

(6) The child-care center shall keep a written record of the administration of medication, including:

(a) Time of each dosage;

(b) Date;

(c) Amount; [and]

(d) Name of staff person giving the medication;

(e) Name of the child; and

(f) Name of the medication.

(6) [(7)] Medication, including refrigerated medication, shall be:

(a) Stored in a separate and locked place, out of the reach of a child;

(b) Kept in the original bottle; and

(c) Properly labeled.

(7) [(8)] Medication shall not be given to a child if the expiration date on the bottle has passed.

Section 8. Kitchen Requirements. (1) The kitchen shall:

(a) Be clean;

(b) Be equipped for [the] proper food:

1. Preservation;

2. Storage;

3. Preparation; and

4. Service [Serving of food];

(c) Be adequately ventilated to the outside air; and

(d) Except in a Type II child-care center when a meal is not being prepared, not be used for the activity of a child.

(2) A child-care center required to have a food service permit shall be in compliance with 902 KAR 45:005 and this administrative regulation.

(3) [A child shall be:

(a) Seated with sufficient room to manage food and tableware; and

(b) Supplied with individual eating utensils designed for use by a child. (4)] Convenient and suitable sanitized utensils shall be:

(a) Provided; and

(b) Used to minimize handling of food during preparation.

(4) [(5)] A cold-storage facility used for storage of perishable food in a nonfrozen state shall:

(a) Have an indicating thermometer or other appropriate temperature measuring device;

(b) Be in a safe environment for preservation; and

(c) Be forty (40) [forty-five (45)] degrees Fahrenheit or below [ or 140 degrees Fahrenheit or above].

(5) [(6)] Except when being thawed for preparation or use, Frozen food shall be:

(a) Kept at a temperature of zero degrees Fahrenheit or below; and

(b) Thawed: [If potentially hazardous:]

1. [Thawed] At refrigerator temperatures;

2. [Thawed] Under cool, potable running water;

3. [Quick thawed] As part of the cooking process; or

4. [Thawed] By another method in accordance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217.

(6) [(7)] Equipment, utensils, and surfaces contacting food shall be:

(a) Smooth;

**VOLUME 39, NUMBER 4 – OCTOBER 1, 2012**

- (b) Free of breaks, open seams, cracks, and chips;
- (c) Accessible for cleaning; and
- (d) Nontoxic.
- (7)[(8)] The following shall be clean and sanitary:
  - (a) Eating and drinking utensils;
  - (b) Kitchenware;
  - (c) Food contact surfaces of equipment;
  - (d) Food storage utensils;
  - (e) Food storage containers;
  - (f) Cooking surfaces of equipment; and
  - (g)[(f)] Nonfood contact surfaces of equipment.
- (8)[(9)] A single-service item[article] shall be:
  - (a) Stored;
  - (b) Handled and dispensed in a sanitary manner; and
  - (c) Used only once.
- (9)[(10)] Bottles shall be:
  - (a) Individually labeled;
  - (b) Promptly refrigerated;and
  - (c) Covered when not in use; and
  - (d) Consumed within one (1) hour of being heated or removed from the refrigerator.

Section 9. Food and Meal Requirements. (1) Food shall be:

- (a) Clean:
  - (b) Free from:
    - 1. Spoilage;
    - 2. Adulteration; and
    - 3. Misbranding;
  - (c) Safe for human consumption;
  - (d) Withheld from service or discarded if the food is hermetically sealed, nonacidic, or low-acidic food that has been processed in a place other than a commercial food-processing establishment;
  - (e) Obtained from a source that is in compliance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217;
  - (f) Acceptable if from an established commercial food store;
  - (g) Served in a quantity that is developmentally appropriate for the child with additional portions provided upon request of the child; and
  - (h) Protected against contamination from:
    - 1. Dust;
    - 2. Flies;
    - 3. Rodents and other vermin;
    - 4. Unclean utensils and work surfaces;
    - 5. Unnecessary handling;
    - 6. Coughs and sneezes;
    - 7. Cuts in skin;
    - 8. Communicable disease;
    - 9. Flooding;
    - 10. Drainage; and
    - 11. Overhead leakage.
- (2) Food shall not be:
  - (a) Used for reward;
  - (b) Used for discipline;
  - (c) Withheld until all other foods are consumed; or
  - (d) Served while viewing electronic devices.
- (3) A serving of milk shall consist of:
  - (a) Breast milk or iron-fortified formula for a child age birth through twelve (12) months;
  - (b) Pasteurized whole milk for children ages thirteen (13) months to twenty-four (24) months; or
  - (c) Pasteurized low fat one (1) per cent or fat-free skim milk for children ages twenty-five (25) months to twelve (12) years of age.
  - (4) Formula or breast milk shall be prepared, labeled, and provided by the parent.
  - (5) A child-care center may participate in the Child and Adult Care Food Program (CACFP).
  - (6) A serving of bread shall only consist of whole or enriched grain.
  - (7) Drinking water shall be freely available to a child throughout the day.
  - (8) Food shall be stored on:
    - (a) Clean racks;
    - (b) Clean shelves;

- (c) Other clean surfaces; or
- (d) If maintained in a sanitary condition, in nonabsorbent labeled containers a minimum of six (6) inches off the floor.
- (9) Fruits and vegetables shall be washed before cooking or serving.
- (10) Meat salads, poultry salads, and cream-filled pastries shall be:
  - (a) Prepared with utensils that are clean; and
  - (b) Refrigerated unless served immediately.
- (11) An individual portion of food served to a child or adult shall not be served again.
- (12) Wrapped food that is still wholesome and has not been unwrapped may be reserved.
- (13) Meals shall be:
  - (a) Served every two (2) to three (3) hours; and
  - (b) Served to a child:
    - 1. Seated with sufficient room to manage food and tableware; and
    - 2. Supplied with individual eating utensils designed for use by a child.
- (14) All children should be offered the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.
- (15) A child-care center shall serve:
  - (a) 1. Breakfast; or
  - 2. A mid-morning snack;
  - (b) 1. Lunch; or
  - 2. A mid-afternoon snack; and
  - (c) If appropriate, dinner.
- (16) A weekly menu shall be:
  - (a) Prepared;
  - (b) Dated;
  - (c) Posted in advance in a conspicuous place;
  - (d) Kept on file for thirty (30) days; and
  - (e) Amended in writing with any substitutions on the day the meal is served.
- (17) Breakfast shall include:
  - (a) Milk;
  - (b) Bread; and
  - (c) 1. Fruit;
  - 2. Vegetable; or
  - 3. 100 percent juice.
- (18) A snack shall include two (2) of the following:
  - (a) Milk;
  - (b) Protein;
  - (c) Bread; or
  - (d) 1. Fruit;
  - 2. Vegetable; or
  - 3. 100 percent juice.
- (19) Lunch and dinner shall include:
  - (a) Milk;
  - (b) Protein;
  - (c) Bread; and
  - (d) 1. Two (2) vegetables;
  - 2. Two (2) fruits; or
  - 3. One (1) fruit and one (1) vegetable.
- (20) There shall be at least a two (2) hour lapse, but no longer than three (3) hours lapse, between each meal or snack.
- (21) A child present at meal or snack time shall be served.
- (22) The child-care center shall serve:
  - (a) 1. Breakfast; or
  - 2. A mid-morning snack;
  - (b) Lunch;
  - (c) A mid-afternoon snack; and
  - (d) If appropriate, dinner.
- (23) A weekly menu shall be:
  - (a) Prepared;
  - (b) Dated;
  - (c) Posted in advance in a conspicuous place;
  - (d) Kept on file for thirty (30) days; and
  - (e) Substitutions to a posted weekly menu shall be noted on the day the meal is served.
- (24) Breakfast shall include:
  - (a) Milk;

(b) Bread; and  
(c) 1. Fruit;  
2. Vegetable; or  
3. 100 percent juice.  
(6) A snack shall include two (2) of the following:  
(a) Milk;  
(b) Protein;  
(c) Bread; or  
(d) 1. Fruit;  
2. Vegetable; or  
3. 100 percent juice.  
(7) Lunch and dinner shall include:  
(a) Milk;  
(b) Protein;  
(c) Bread; and  
(d) 1. Two (2) vegetables; or  
2. A fruit and one (1) vegetable.  
(8) Food shall be:  
(a) Clean;  
(b) Free from:  
1. Spoilage;  
2. Adulteration; and  
3. Misbranding;  
(c) Safe for human consumption;  
(d) Withheld from service or discarded if the food is hermetically sealed, nonacidic, or low-acidic food that has been processed in a place other than a commercial food-processing establishment;  
(e) Obtained from a source that is in compliance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217;  
(f) Acceptable if from an established commercial food store;  
(g) Served in a quantity reflecting the developmental stage of the child with additional portions provided upon request of the child; and  
(h) Protected against contamination from:  
1. Dust;  
2. Flies;  
3. Rodents and other vermin;  
4. Unclean utensils and work surfaces;  
5. Unnecessary handling;  
6. Coughs and sneezes;  
7. Flooding;  
8. Drainage; and  
9. Overhead leakage.  
(9) Food shall be stored on:  
(a) Clean racks;  
(b) Clean shelves;  
(c) Other clean surfaces; or  
(d) If maintained in a sanitary condition, food in nonabsorbent containers may be stored on the floor.  
(10) Fruits and vegetables shall be washed before cooking or serving.  
(11) Meat salads, poultry salads, and cream-filled pastries shall be:  
(a) Prepared with utensils that are clean; and  
(b) Unless served immediately, refrigerated pending service.  
(12) An individual portion of food served to a child or adult shall not be served again.  
(13) Wrapped food that is still wholesome and has not been unwrapped may be reserved.  
(14) Drinking water shall be freely available to a child.  
(15) A center may participate in the Child and Adult Care Food Program (CACFP) or provide formula to the child.  
(16) A parent who provides formula or breast milk to the center for the child shall prepare the liquid and label its container.]

Section 10. Toilet, Diapering, and Toiletry Requirements. (1) A child-care center shall have a minimum of one (1) toilet and one (1) lavatory for each twenty (20) children. Urinals may be substituted for up to one-half (1/2) of the number of toilets required for a male toilet room.

- (2) A toilet room shall:  
(a) 1. Be provided for each gender; or  
2. A plan shall be implemented to use the same toilet room at

separate times;  
(b) Have a supply of toilet paper; and  
(c) Be cleaned and sanitized daily.  
(3) A sink shall be:  
(a) Located in or immediately adjacent to toilet rooms;  
(b) Equipped with hot and cold running water that allows for hand washing;  
(c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120[no more than 110] degrees Fahrenheit;  
(d) Equipped with liquid soap;  
(e) Equipped with hand-drying blower or[and] single use disposable hand drying material;  
(f)[(e)] Equipped with an easily cleanable[covered] waste receptacle; and  
(g)[(f)] Immediately adjacent to a changing area used for infants and toddlers.  
(4) Each toilet shall:  
(a) Be kept in clean condition;  
(b) Be kept in good repair;  
(c) Be in a lighted room; and  
(d) Have ventilation to outside air.  
(5) Toilet training shall be coordinated with the child's parent.  
(6) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.  
(7) If a toilet training chair is used, the chair shall be:  
(a) Used over a surface that is impervious to moisture;  
(b) Out of reach of other toilets or toilet training chairs;  
(c) Emptied promptly; and  
(d)[(b)] Sanitized after each use.  
(8) Diapers or clothing shall be:  
(a) Changed when soiled or wet;  
(b) Stored in a covered container temporarily; and  
(c) Washed or disposed of at least once a day.  
(9) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.  
(10) When a child is diapered, the child shall:  
(a) Not be left unattended; and  
(b) Be placed on a surface that is:  
1. Clean;  
2. Padded;  
3. Free of holes, rips, tears, or other damage;  
4. Nonabsorbent;  
5. Easily cleaned; and  
6. Free of any items not used for diaper changing.  
(11) Unless allergic, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.  
(12) Staff shall disinfect the diapering surface after each child is diapered.  
(13) If staff wear disposable gloves, the gloves shall be changed and disposed after each child is diapered.  
(14) Combs, towels or washcloths, brushes, and toothbrushes used by a child shall be:  
(a) Individually stored in separate containers; and  
(b) Plainly labeled with the child's name.  
(15) Toothbrushes shall be:  
(a) Individually identified;  
(b) Allowed to air dry; and  
(c) Protected from contamination.  
(16) Toothpaste used by multiple children shall be dispensed onto an intermediate surface, such as waxed paper, to avoid cross contamination.

Section 11. Toys and Furnishings. (1) All toys, equipment, and furniture contacted by a child shall be:

- (a) Kept clean and in good repair; and  
(b) Free of peeling, flaking, or chalking paint.  
(2) Indoor and outdoor equipment shall:  
(a) Be clean, safe, and in good repair;  
(b) Meet the physical, developmental needs, and interests of children of different age groups;  
(c) Be free from sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, lead-based paint, poisonous material, and flaking or chalking paint; and

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(d) Be designed to guard against entrapment or situations that may cause strangulation.

(3) Toys shall be:

(a) Used according to the manufacturer's safety specifications;

(b) Durable; and

(c) Without sharp points or edges.

(4) Toys and other items that are considered mouth contact surfaces by a child not toilet trained shall be sanitized daily by:

(a) Scrubbing in warm, soapy water using a brush to reach into crevices;

(b) Rinsing in clean water;

(c) Submerging in a sanitizing solution for at least two (2) minutes; and

(d) Air dried.

(5) Tables and chairs shall be of suitable size for children.

(6) Chairs appropriate for staff shall be provided to use when feeding, holding, or playing with a child.

Section 12. Transportation. (1) A center shall document compliance with KRS Chapter 186 and 603 KAR 5:072 pertaining to:

(a) Vehicles;

(b) Drivers; and

(c) Insurance.

(2) A center providing or arranging transportation service shall:

(a) Be licensed and approved by the cabinet or its designee prior to transporting a child;

(b) Have a written plan that details the type of transportation, staff schedule, transportation schedule, and transportation route; and

(c) Have written policies and procedures, including emergency procedures practiced monthly by staff that transport children.

(3) Prior to transporting a child, a center providing transportation services of a child shall notify the cabinet or its designee in writing of the:

(a) Type of transportation offered;

(b) Type of vehicle used for transportation;

(c) Plan for ensuring staff perform duties relating to transportation properly;

(d) Full insurance coverage for each vehicle;

(e) Agency policy and procedures relating to an emergency plan for evacuating the vehicle;

(f) Contracts, agreements, or documents detailing arrangements with any third party for services; and

(g) Safety procedures for:

1. Transporting a child;

2. Loading and unloading a child; and

3. Providing adequate supervision of a child.

(4) A vehicle used to transport children shall be equipped with:

(a) A fire extinguisher;

(b) First aid supplies as described in Section 7 of this administrative regulation;

(c) Emergency reflective triangles; and

(d) A device to cut the restraint system, if necessary.

(5) Transportation provided by licensed public transportation or a school bus shall comply with subsections (1) and (2) of this section.

(6) A vehicle used to transport children shall meet the following requirements:

(a) A twelve (12) or more passenger vehicle shall display a current certification of inspection from the Transportation Cabinet on the designated window.

(b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:

1. Signal lamps;

2. Identifying colors; and

3. Cautionary words.

(c) A vehicle shall be equipped with seat belts for each occupant to be individually secured.

(d) A vehicle shall not transport children and hazardous materials at the same time.

(7) The appropriate car safety seat meeting federal and state motor vehicle safety standards in 49 C.F.R. 571.213 and KRS 189.285 shall be used for each child.

(8) A daily inspection of the vehicle shall be performed and

documented for the following:

(a) Tires;

(b) Lights, signals, mirrors, gauges, and wiper blades;

(c) Safety restraints;

(d) Fuel; and

(e) Free of debris.

(9)(a) The staff-to-child ratios set forth in Section 2(2) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.

(b) An individual who is driving with a child in the vehicle shall supervise no more than four (4) children under the age of five (5).

(10) Each child shall:

(a) Have a seat;

(b) Be individually belted or harnessed in the seat; and

(c) Remain seated while the vehicle is in motion.

(11) A child shall not be left:

(a) Unattended at the site of aftercare delivery; and

(b) Unattended in a vehicle.

(12) If the parent or designee is unavailable, a prearranged written plan shall be completed to designate where the child can be picked up.

(13) A child shall not be picked up or delivered to a location that requires crossing the street or highway unless accompanied by an adult.

(14) A vehicle transporting a child shall have the headlamps on.

(15) A vehicle shall be refueled when not being used to transport a child. If emergency refueling or repair is necessary during transporting, all children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(16) If the driver is not in the driver's seat, the:

(a) Engine shall be turned off;

(b) Keys shall be removed; and

(c) Emergency brake shall be set.

(17) Transportation services provided shall:

(a) Be recorded in writing and include:

1. The first and last name of the child transported; and

2. The time each child gets on and the time each child gets off;

(b) Be completed by a staff member other than the driver; and

(c) Be kept for five (5) years.

(18) A driver of a vehicle transporting a child for a center shall:

(a) Be at least twenty one (21) years old;

(b) Complete the background checks as described in 922 KAR 2:110;

(c) Hold a current driver's license which has not been suspended or revoked during the last five (5) years; and

~~(d) [Not have had any convictions concerning vehicle operation in the past twelve (12) months; and~~

~~(e) [Not caused an accident which resulted in the death of a person.~~

(19) ~~Firearms~~ Guns, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

Section 13. Animals. (1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

1. The animal is under the supervision and control of an adult;

2. Written parental consent has been obtained; and

3. The animal is certified as vaccinated against rabies; or

(b) Except in accordance with subsection (3) of this section. ~~(Animals shall be:~~

~~(a) Supervised by an adult if in the presence of a child in care; and~~

~~(b) Certified as properly vaccinated against rabies.]~~

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a child-care center unless the animal is:

(a) A part of a planned program activity lead by an animal specialist affiliated with a zoo or nature conservatory; and

(b) In accordance with 301 KAR 2:081 and 301 KAR 2:082. ~~[Except if used as planned program activity in the control of an animal specialist, an animal that is considered undomesticated, wild, or exotic shall not be allowed at a child-care center.]~~

TERESA C. JAMES, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 13, 2012 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 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 health and safety standards for child-care centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards regarding health and safety for child-care centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing minimum health and safety standards for child-care centers as condition of their licensure.

(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 health and safety standards for child-care centers.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the standards for a child-care center with more recently enacted state laws (i.e., new requirements with regard to evacuation planning, training on pediatric abusive head trauma, and consumer product safety notice) and related administrative regulations in Title 922 KAR Chapter 2 and their concurrent amendment. Standards across child-care provider types have been aligned with regard to required health considerations and background checks, including checks of the Sex Offender Registry; care requirements for a child; and common terminology. In addition, the amendment to this administrative regulation makes care requirements (e.g., care of a child with special needs, food services, provision of medication, safety and environmental precautions, contact with animals, transportation of children, program planning, hygiene, and sleeping and napping) consistent with recommendations from national groups and in-state stakeholders. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary as a result of the enactment of KRS 199.895 governing evacuation plan requirements for child-care centers, KRS 199.897 governing product safety information, amendment to KRS 199.896 regarding child-care provider training, and federal regulations pertaining to cribs; amendments to related administrative regulations in Title 922 KAR Chapter 2; and inputs solicited from stakeholders

and gained through research since the administrative regulation's adoption.

(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 health and safety standards for child-care centers.

(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 the quality of child-care center health and safety standards in conformity with state law and expert recommendations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child-care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of June 30, 2012, there were 2,315 Kentucky licensed child-care centers.

(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: Requirements across child-care provider types have been made more consistent with regard to required health considerations; care requirements for a child; and common terminology. The amendment to this administrative regulation implements care requirements for a child with special needs; modifies food service provisions congruent with the Child Care Adult Food Program; clarifies provisions pertaining to administering medication, safety and environmental precautions, contact with animals, transportation, program planning, hygiene; and sleeping and napping. In addition to recently enacted state and federal laws, recommendations from national groups and in-state stakeholders served as guidance in the development of this and other regulatory amendments to standards governing child-care providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will entail minimal, if any, new costs to new applicants or existing licensed child-care centers. The Department for Community Based Services (DCBS) assessed all suggested changes to the administrative regulation to avoid a negative fiscal impact to new or existing child-care providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and licensed child-care centers and the children in their care will benefit from the enhanced clarity, modest quality enhancements, and alignment with other laws made to this and other administrative regulations in Title 922 KAR Chapter 2.

(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: The Child Care and Development Fund Block Grant, state match for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 16 C.F.R. 1219, 1220, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 42 U.S.C. 7181-7184

2. State compliance standards. KRS 194A.050(1), 199.896(2)

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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 16 C.F.R. 1219, 1220, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 42 U.S.C. 7181-7184, KRS 194A.050(1), 199.896(2)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? 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:

### CABINET FOR HEALTH AND FAMILY SERVICES

#### Department for Community Based Services

#### Division of Child Care

#### (Amendment)

### 922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program.

RELATES TO: KRS 17.165, 17.500–17.580, 199.011(2), (4), 199.896(16), 199.898, 199.8982, 199.8994, 214.010, 314.011(5), KRS 527.070(1), 620.020(8), 45 C.F.R. 98, 601-619, 9858, 42 U.S.C. 7181-7184

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8994(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8994(6) requires the cabinet to promulgate administrative regulations to establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child care provider that receives a child care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care. This administrative regulation establishes requirements for providers to participate in the Child Care Assistance Program and the application procedures.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.011(2).

(3) "Child" is defined by KRS 199.011(4) and may include a minor:

(a) Thirteen (13) years of age; or

(b) Eighteen (18) years of age if the minor has a special need for which supervision is required.

(4) [(2)] "Closed" means the provider is no longer a registered program provider.

(5) "Conditional Approval" means time-limited approval while completing required training.

(6) "Corporal physical discipline" is defined by KRS 199.896(18).

(7) [(3)] "Denied" means the application for program registration is not approved and the applicant will be penalized.

(8) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(9) [(4)] "Health professional" means a person actively licensed in Kentucky as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner; or

(d) Registered nurse as defined in KRS 314.011(5) under the supervision of a physician.

(10) "Related" means having one (1) of the following relationships with the registered provider:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Step-child; or

(g) Child in legal custody of the provider.

(11) "Pediatric abusive head trauma" is defined in KRS 620.020(8).

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

(13) [(5)] "Revoked" means the provider is no longer a registered provider and the provider will be penalized.

(14) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(15) [(6)] "Withdrawn" means the application for program registration is removed from consideration without a penalty.

Section 2. Application Rights and Requirements for Child Care Provider Registration. (1) An individual shall notify the cabinet or its designee of the individual's intent to apply for child care provider registration:

(a) Directly by:

1. Telephone; or

2. Written statement; or

(b) Indirectly by being designated as the choice for providing unregulated child care by an applicant for benefits under the Child Care Assistance Program (CCAP) in accordance with 922 KAR 2:160, as defined in 922 KAR 2:160, Section 1(6)].

(2) An individual may apply or reapply for child care provider registration on the same day that the notice of intent to apply in

accordance with subsection (1) of this section is made with the cabinet or its designee.

(3) An individual who intends and requests to apply for registration as a child care provider shall not be required to appear in person to complete an application and supporting documentation in accordance with subsections (4) and (5) of this section, but may receive all necessary forms and instructions by mail.

(4) To apply for child care provider registration in CCAP, an individual shall, within thirty (30) calendar days of giving notice of intent to apply pursuant to subsection (1) of this section:

(a) Submit:

1.a. A completed DCC-95, Application for Registered Child Care Provider in Provider's Home; or

b. A completed DCC-96, Application for Registered Child Care Provider in Child's Home;

2. Written verification from a health professional that the individual is:

a.~~[The individual is]~~ Free of active tuberculosis; and

b.~~[The individual is]~~ In good general health and able to care for children;

3. A completed DCC-94A, Registered Child Care Provider Information Form; ~~and~~

4. A completed IRS W-9,~~[the]~~ Request for Taxpayer Identification Number and Certification; ~~and~~

5. A written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care that includes:

a. A designated relocation site;

b. Evacuation routes;

c. Measures for notifying parents of the relocation site and ensuring a child's return to the child's parent; and

d. Actions to address the needs of an individual child to include a child with a special need. The cabinet shall post an online template of an evacuation plan that fulfills requirements of this administrative regulation for an individual's free and optional use;

(b) Show proof by photo identification or birth certificate that the individual is eighteen (18) years or older;

(c) Show verification of Social Security number; and

(d)~~[(e)]~~ Meet the requirements of KRS 17.165(5), as shown by ~~providing~~~~[including]~~:

1. A criminal records check conducted by the Kentucky State Police or ~~the~~ Administrative Office of the Courts within the previous twelve (12) months on the individual;

2. A child abuse and neglect check using the central registry in accordance with 922 KAR 1:470 on the individual;~~and~~

3. A criminal records check for any previous state of residence completed once if:

a. The applicant resided outside the state of Kentucky in the last five (5) years; and

b. No criminal records check has been completed for the applicant's previous state of residence; and

4. Permission to conduct an address check of the Sex Offender Registry~~[Provision of the criminal records and child abuse and neglect check results, conducted pursuant to subparagraphs 1 and 2 of this paragraph, to the cabinet or its designee].~~

(5)~~(a)~~ An applicant may receive conditional approval in accordance with Section 4(2) of this administrative regulation.

(b) Within ninety (90) calendar days of giving notice of intent to apply for registration as a child care provider in CCAP pursuant to subsection (1) of this section, the applicant shall provide verification that the applicant has obtained three (3) hours of training approved by the cabinet or its designee, in the areas of:

1. Health, safety, and sanitation~~[(a) Infant and child first aid];~~

2.~~[(b)]~~ Recognition of child abuse and neglect, which may include cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.896(16); and

3. Developmentally appropriate child care practice.

(c) An applicant who fails to complete training in accordance with paragraph (b) of this subsection shall be subject to cabinet action in accordance with Section 4(4) of this administrative regulation~~[Health and safety standards].~~

Section 3. Additional Requirements for Registered Providers in Provider's Home. (1) If a registered child care provider provides

child care services in the provider's home:

(a)~~[(c)]~~ The provider shall:

1.~~[(a)]~~ Submit written verification from a health professional that each member of the provider's household age eighteen (18) or older is free from tuberculosis; and

2.~~[(b)]~~ Provide written verification that each member of the provider's household who is age eighteen (18) or older meets the requirements in KRS 17.165 by the member's provision of the following to the cabinet or its designee~~[submission to a]~~:

a.~~[(1-)]~~ Criminal records check conducted by the Kentucky State Police or ~~the~~ Administrative Office of the Courts;

b. Criminal records check for any previous state of residence completed once if:

(i) The household member resided outside the state of Kentucky in the last five (5) years; and

(ii) No criminal records check has been completed for the household member's previous state of residence; and

c.~~[(2-)]~~ Child abuse and neglect check using the central registry in accordance with 922 KAR 1:470.

(b) An address check of the Sex Offender Registry and supporting documentation shall confirm that no individual residing in the provider's household is a registered sex offender; ~~and~~

3. ~~Provision of the criminal records and child abuse and neglect check results, conducted pursuant to subparagraphs 1 and 2 of this paragraph, to the cabinet or its designee].~~

(2) A registered child care provider shall certify that the provider's home and each play area used for child care are safe and have adequate:

(a) Heat;

(b) Light; and

(c) Ventilation.

(3) Each floor of ~~a~~~~[the]~~ registered child care provider's home used for child care shall have at least one (1):

(a) Unblocked exit to the outside;

(b) Smoke detector;

(c) Fire extinguisher; and

(d) Carbon monoxide detector if the home:

1. Uses fuel burning appliances; or

2. Has an attached garage.

(4) ~~A~~~~[The]~~ registered child care provider's home and areas accessible to children in care shall be free of hazards, and the following items shall be inaccessible to a child in care:

(a) Cleaning supplies, poisons, paints, and insecticides;

(b) Knives, scissors, and other sharp objects;

(c) Power tools, lawn mowers, hand tools, nails, and other like equipment;

(d) Matches, cigarettes, lighters, combustibles, and flammable liquids;

(e) Alcoholic beverages; and

(f) Medications.

(5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored and locked in locations separate from each other and inaccessible to a child in care.

(6) Electrical outlets not in use shall be covered.

(7) An electric fan, floor furnace, freestanding heater, wood burning stove, or fireplace, shall:

(a) Be out of the reach of a child; or

(b) Have a safety guard to protect a child from injury.

(8) ~~A~~~~[The]~~ registered child care provider shall use protective gates to block all stairways if a child in care is under age three (3).

(9) Stairs and steps shall:

(a) Be in good repair; and

(b) Include railing of comparable length to the stairs or steps.

(10) A registered child care provider's home shall have:

(a) At least one (1) working telephone with a residential line or an active mobile service; and

(b) An accessible list of emergency telephone numbers, including the numbers for the:

1. Police;

2. Fire station;

3. Emergency medical care;

4. Poison control center; and

5. Reporting of child abuse and neglect.

(11) ~~A~~~~[The]~~ registered child care provider's home shall have a:

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(a) Refrigerator in working order that maintains a temperature of forty-five (45) degrees Fahrenheit or below; and

(b) Freezer that maintains a temperature of zero degrees Fahrenheit.

(12) ~~A~~[The] registered child care provider shall maintain first aid supplies that include:

- (a) Liquid soap;
- (b) Band aids;
- (c) Sterile gauze; and
- (d) Adhesive tape.

(13) ~~A~~[The] registered child care provider shall wash hands with liquid soap and running water:

- (a) Before and after diapering a child;
- (b) Before and after food preparation;
- (c) Before feeding a child, and
- (d) At other times when necessary to prevent the spread of disease.

(14) In accordance with KRS 199.896(18), a registered child care provider shall not use corporal physical discipline on a child entrusted to the provider's care.

(15) Pets or livestock shall be vaccinated and not left alone with a child.

(16) If transportation is provided by a registered child care~~the~~ provider, the~~registered child care~~ provider shall:

- (a) Have written permission from a parent or guardian to transport the child;
- (b) Have a vehicle equipped with seat belts; and
- (c) Comply with KRS 189.125 regarding child restraint and seating~~Ensure that each child over forty (40) inches in height is restrained in accordance with Kentucky law; and~~
- (d) Comply with KRS 189.125(3) for each child forty (40) inches in height or less and comply with 189.125(6).

Section 4. Actions on Applications. (1) The cabinet or its designee shall approve, deny, or withdraw an individual's application for registration within thirty (30)~~forty-five (45)~~ calendar days from receipt of the individual's notice of intent to apply made in accordance with Section 2(1) of this administrative regulation.

(2) The cabinet or its designee may conditionally approve an individual who made a notice and application pursuant to Section 2(1) and (4)~~(5)~~ of this administrative regulation, to provide child care services to a child for ninety (90) calendar days, if the applicant meets the requirements of:

- (a) Sections 2(4), (5), and 5, and 6 of this administrative regulation; and
- (b) Section 3 of this administrative regulation, if child care is given in the home of the provider.

(3) The cabinet or its designee shall approve an individual who made a notice and application pursuant to Section 2(1) and (4)~~(5)~~ of this administrative regulation as a registered child care provider for one (1) year, if the applicant meets the requirements specified in:

- (a) Sections 2(4) through (5)~~(6)~~, and 5, and 6 of this administrative regulation; and
- (b) Section 3 of this administrative regulation if child care is given in the home of the provider.

(4) If a conditionally approved provider, as specified in subsection (2) of this section, has not completed the training requirement within the ninety (90) day timeframe pursuant to Section 2(5)~~(6)~~ of this administrative regulation, the cabinet or its designee shall:

- (a) Not approve an applicant for payment pursuant to 922 KAR 2:160 past the ninety (90) days of conditional approval; and
- (b) Deny another:
  - 1. Period of conditional approval for the same applicant; or
  - 2. Application from the same applicant unless training has been completed in accordance with Section 2(5) of this administrative regulation.

(5) The cabinet may confirm training verification provided by an applicant, conditionally approved applicant, or registered child care provider through the cabinet-approved training database maintained in accordance with 922 KAR 2:240.

Section 5. General Requirements for Registered Child Care Providers. (1) A registered child care provider shall not:

- (a) Live in the same residence as the child in care;
- (b) Hold a license to provide child care in accordance with 922 KAR 2:090;

(c) Hold certification to provide child care in accordance with 922 KAR 2:100; or

(d) Provide care for more than three (3) children unrelated to the provider in accordance with KRS 199.8982(1)(a).

(2) A registered child care provider shall not provide other home based services, including such services as:

- (a) A personal care home in accordance with 902 KAR 20:036;
- (b) A family care home in accordance with 902 KAR 20:041;
- (c) An adult day care in accordance with 910 KAR 1:160; or
- (d) Supports for community living in accordance with 907 KAR 1:145.

(3) A registered child care provider shall:

- (a) Comply with the:
  - 1. Provisions of KRS 199.898; and
  - 2. Provider requirements in accordance with 922 KAR 2:160, Section 13;

(b) Allow the cabinet, its designee, and parent access to the premises where a child receives care during the hours that the child care services are provided; and

(c) Report within ten (10) calendar days any change to the provider's:

- 1. Address;
- 2. Name;
- 3. Telephone number;
- 4. Household members; or
- 5. Location where the child care is provided.

(4) A registered child care provider who gives care in the provider's home shall comply with the requirements of Section 3(1) of this administrative regulation within ten (10) calendar days for a:

- (a) New household member who is eighteen (18) years or older; or
- (b) Household member who turns age eighteen (18).

(5)(a) A registered child care provider shall maintain a~~monthly~~ sign-in sheet in which the daily arrival and departure times of each child are recorded in accordance with 922 KAR 2:160, Section 13.

(b) A registered child care provider shall retain~~monthly~~ sign-in sheets completed in accordance with paragraph (a) of this subsection for five (5) years.

(6) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

(7) While providing child care services, a registered provider and another person in the provider's home shall:

- (a) Be free of the influence of alcohol or a controlled substance, except for use of a controlled substance as prescribed by a physician; and
- (b) Prohibit smoking in the presence of a child in care.

(8) A registered child care provider shall report to the cabinet or designee:

- (a) Within twenty-four (24) hours from the time of discovery:
  - 1. A communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;
  - 2. An accident or injury to a child that requires medical care;
  - 3. An incident that results in legal action by or against the registered child care provider that affects:

- a. A child in care;
  - b. The registered child care provider; or
  - c. An adult residing in the registered child care provider's household if child care services are provided in the provider's home;

- 4. An incident involving a fire or other emergency; or
  - 5. A report of child abuse or neglect that:

a. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

- b. Names:
  - (i) The registered child care provider as the alleged perpetrator; or

(ii) A member of the registered child care provider's household as alleged perpetrator if child care services are provided in the provider's home;

- (b) An incident of child abuse or neglect pursuant to KRS

620.030:

(c) The death of a child in care within one (1) hour; or  
(d) The provider's temporary or permanent closure as soon as practicable, which shall also be given to the parent of a child in care.

Section 6. Child Ratios. During hours of operation, a registered child care provider shall not care for more than:

- (1) Three (3) children receiving CCAP per day;~~[or]~~
- (2) Six[six] (6) children receiving CCAP per day, if those children are:
  - (a) A part of a sibling group; and
  - (b) Related to the provider; or
  - (3)[(2)] A total of eight (8) children inclusive of the provider's own children.

Section 7. Renewal of Registration. (1) The cabinet or its designee shall send a reminder notice to a registered child care provider at least forty-five (45) calendar days prior to the expiration date of the provider's registration issued in accordance with Section 4(3) of this administrative regulation.

(2) To renew child care provider registration prior to the expiration of the registration, a registered child care provider shall:

- (a) Meet the requirements specified in Sections 2(4),~~[(5) and] 5, and 6~~ of this administrative regulation;~~[and]~~

(b) Complete, and provide verification of, three (3) hours of training in early care and education approved by the cabinet or its designee;

1. To include one and one-half (1 1/2) hours of pediatric abusive head trauma training;

a. Within first year of employment or operation as a child care provider; and

b. Completed once during each subsequent five (5) years of employment or operation as a child care provider;[,] and

2. In one (1) or more of the following subjects:

- a.[1-] Child growth and development;
- b.[2-] Learning environments and nutrition;
- c.[3-] Health, safety, and nutrition;
- d.[4-] Family and community partnerships;
- e.[5-] Child assessment;
- f.[6-] Professional development and professionalism; or
- g.[7-] Program management and evaluation;

(c) Submit an updated version of the evacuation plan described in Section 2(4)(a)5 of this administrative regulation;

(d) Retain a copy of the updated evacuation plan; and

(e) Provide a copy of the updated evacuation plan to each parent of a child in care.

(3) In addition to the requirements of subsection (2) of this section, a registered provider who gives care in the provider's home shall also meet the requirements of Section 3 of this administrative regulation.

Section 8. Negative Action for An Applicant or A Registered Child Care Provider. (1) If a registered child care provider or a member of the provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the family-in-need-of-services assessment or investigation; and

(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

(2) The cabinet or its designee shall send written notice of negative action to:

- (a) An applicant for registration, if the application is:
  - 1. Withdrawn; or
  - 2. Denied; or
- (b) A registered child care provider, if the provider's registration is:

- 1. Closed; or
- 2. Revoked.

(3)[(2)] The notice of negative action shall include the:

- (a) Reason for the negative action; and

(b) Effective date.

(4)[(3)] An application for registration shall be denied or a registered provider's registration shall be revoked if:

(a) Written verification from a health professional confirms a diagnosis of tuberculosis;

(b) A background check pursuant to KRS 17.165(5) reveals a:

1. Substantiated incident of child abuse or neglect in accordance with 922 KAR 1:470; or
2. Conviction of a:

- a. Violent crime; or
- b. Sex crime;

(c) A history of behavior exists that may impact the safety or security of a child in care including:

1. A conviction related to the abuse or neglect of an adult;
2. A conviction for a drug-related felony unless five (5) years have elapsed since the person was fully discharged from imprisonment, probation, or parole;

3. A confirmation through an address check and supporting documentation that a:

- a. Provider is a registered sex offender; or
- b. Member of the provider's household is a registered sex offender, if the provider provides child care services in the provider's home; or

4.[3-] Other behavior or condition indicating inability to provide reliable care to a child;

(d) The provider uses or allows the use of any form of corporal physical discipline on a child entrusted to the provider's care; or

(e) The cabinet has probable cause to believe there is an immediate threat to the health, safety, or welfare of a child.

(5)[(4)] An applicant or registered child care provider whose application has been denied or whose registration has been revoked by the cabinet or its designee as the result of a negative action stemming from the requirements specified in 922 KAR 2:090, 2:100, 2:110, 2:120, or this administrative regulation, shall not be eligible to apply, operate, or reapply for registration with CCAP for a penalty period of one (1) year from the date of denial, suspension, or revocation. After completion of the one (1) year penalty period from the date of prior denial, suspension, or revocation, an individual may be approved if the individual:

(a) Complies with:

1. Sections 2,~~[and] 5, and 6~~ of this administrative regulation; and

2. If care is given in the home of the provider, Section 3 of this administrative regulation;

(b) Completes, and provides verification of, an additional twelve (12) hours of training approved by the cabinet or its designee in early care and education;

(c) Has not had an application, certificate, license, or registration to operate as a child care provider denied or revoked as specified in KRS 17.165; and

(d) Completes any disqualification period imposed from a previous denial, suspension, or revocation of providing child care services.

(6)[(5)] An application may be withdrawn:

(a) If all required documentation for the application process is not received within thirty (30) calendar days in accordance with Section 2(4) of this administrative regulation; or

(b) At the request of the applicant.

(7)[(6)] A registered child care provider's status may be closed:

(a) At the request of the provider; or

(b) If the provider fails to comply with requirements in Section 3, 5, 6, or 7(2).

Section 9. Appeal of Negative Action. If the cabinet or its designee denies or withdraws an application for registration, ~~[or]~~ revokes a provider's registration, or closes a provider, the applicant or provider may request an appeal in accordance with 922 KAR 1:320.

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

(a) "DCC-94A Registered Child Care Provider Information Form", edition 7/12~~[11/07]~~;

(b) "DCC-95, Application for Registered Child Care Provider in

Provider's Home", edition 7/12[11/07];

(c) "DCC-96, Application for Registered [for] Child Care Provider in Child's Home", edition 7/12[11/07]; and

(d) "IRS W-9, Request for Taxpayer Identification Number and Certification", edition 10/07[11/05].

(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.

TERESA C. JAMES, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 13, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 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 requirements for child care providers to participate in the Child Care Assistance Program (CCAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for child care providers to participate in CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of requirements for a child care provider to participate in CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care provider to participate in CCAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the standards for registered child care providers to reinforce that all child care provider types are subject to evacuation planning and pediatric abusive head trauma training in the best interest of children served. Additional updates were made to ensure consistency with related administrative regulations in Title 922 KAR Chapter 2 and their concurrent amendment. Standards across child-care provider types have been aligned with regard to required health considerations and background checks, including checks of the Sex Offender Registry; incident reporting to the cabinet; and common terminology. In addition, the amendment to this administrative regulation clarifies initial application and renewal requirements for registered providers and criteria for denial, suspension, or revocation of registration. The amendment aligns care requirements with recommendations from national groups and in-state stakeholders. The amendment also makes technical corrections in

accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure registered providers maintain minimal standards that are like those of other provider types who are subject to the more recently enacted state laws: KRS 199.895 governing evacuation plan requirements, and KRS 199.896 and KRS 199.8982 regarding child-care provider training. These minimal enhancements are in the best interests of children served and consistent with nationally recognized practice. Additionally, the amendment provides for congruency between this administrative regulation and amendments to related administrative regulations in Title 922 KAR Chapter 2; and between this administrative regulation and inputs solicited from stakeholders and gained through research since the administrative regulation's adoption.

(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 the requirements for a child-care provider to participate in CCAP.

(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 the quality of standards for registered child care providers to participate in CCAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicant and existing registered child care providers will be impacted by this administrative regulation. As of June 30, 2012, there were 635 Kentucky registered child-care providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation models recently enacted state law, specifically evacuation plan and pediatric abusive head trauma training requirements, and makes them applicable in modified form for registered child care providers. Other requirements have been streamlined and made clearer and more consistent across provider types and for program alignment. Actions of a similar caliber as present actions will be required of registered child care providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will entail minimal, if any, new costs to new applicants or existing registered providers. The Department for Community Based Services (DCBS) assessed all suggested changes to the administrative regulation to avoid a negative fiscal impact to new or existing child-care providers. In addition, DCBS has partnered with various stakeholders to facilitate quality evacuation plan development and to develop free online trainings and a free online evacuation plan template for providers, to reduce any additional workload burden and costs associated with evacuation planning and pediatric abusive head trauma training.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and registered child-care providers and the children in their care will benefit from greater emergency preparedness, more streamlined and clear application and renewal requirements, greater consistency in standards across child-care provider types, and enhanced recognition of signs of child abuse and neglect.

(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: The Child Care and Development Fund Block Grant, state match for the

block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 601-619, 9858, 42 U.S.C. 7181-7184

2. State compliance standards. KRS 194A.050(1), 199.8994(6)

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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 98, 601-619, 9858, 42 U.S.C. 7181-7184, KRS 194A.050(1), 199.8994(6)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will 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? 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:

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

#### 922 KAR 2:190. Civil penalties.

RELATES TO: KRS Chapter 13B, 199.896, 199.990

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other states and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the secretary to promulgate administrative regulations to establish procedures for enforcement of penalties. KRS 199.896(4)(5) authorizes ~~the Secretary of~~ the cabinet to take emergency action in the event of an immediate threat to public health, safety, or welfare. KRS 199.990(4) establishes the penalties to be assessed for violations of KRS 199.896 that pose an immediate threat to the health, safety, or welfare of a child served by a child-care center~~child-care facility~~. KRS 199.896(7) establishes a right of appeal for a child-care~~child-care~~ center aggrieved by an action of the cabinet adverse to the center's interests or the cabinet's assessment of a civil penalty. This administrative regulation establishes the cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation~~to carry out the statutory provisions~~.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.894(1).

(2) "Child-care center" is defined by KRS 199.894(3).

(3) "Licensee" means the owner and operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education;

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution.

(4) "Office of Inspector General" or "OIG" means the organizational unit of the cabinet established in accordance with KRS 194A.030(1)(c) or its designee.

(5) "Statement of deficiency" means a finding of a regulatory noncompliance issued in accordance with 922 KAR 2:090, Section 9.

Section 2. Types of Violations. The cabinet shall issue a license a:

(1) Type A violation if:

(a) A child-care center violates a standard or a requirement specified in KRS 199.896, KRS 199.990(4), 922 KAR 2:090, 922 KAR 2:110, or 922 KAR 2:120; and

(b) The violation creates harm, an imminent threat, or an imminent danger to the health, safety, or welfare of a child in the center's care, such as the center:

1. Failing to:

a. Provide for the health, safety, or welfare of a child in care that results in injury to the child, the child's hospitalization, or death of the child;

b. Complete a criminal records check and a child abuse and neglect check required in accordance with:

(i) 922 KAR 2:090, Section 6; or

(ii) 922 KAR 2:110, Section 5;

c. Remove a person with a substantiation of child abuse or neglect from contact with a child in care in accordance with:

(i) 922 KAR 2:090, Section 6; or

(ii) 922 KAR 2:110, Section 5;

d. Comply with a suspension of services; or

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

e. Administer discipline in accordance with 922 KAR 2:120, Section 2(8) or 2(10);

2. Falsifying records;

3. Operating contrary to approved licensed services; or

4. Changing location without prior approval of the cabinet.

(2) Type B violation if:

(a) A child-care center violates a standard or requirement specified in KRS 199.896, KRS 199.990(4), 922 KAR 2:090, 922 KAR 2:110, or 922 KAR 2:120; and

(b) The violation presents a concern or risk to the health, safety, or welfare of a child in care, but does not create harm, an imminent threat, or an imminent danger to the child, such as the center:

1. Failing to:

a. Complete one (1) of a person's background checks required in accordance with:

(i) 922 KAR 2:090, Section 6; or

(ii) 922 KAR 2:110, Section 5;

b. Respond to a child's first aid and medical needs in accordance with 922 KAR 2:120, Section 7;

c. Have staff currently certified in cardiopulmonary resuscitation and first aid in accordance with 922 KAR 2:110, Sections 5(3) through 5(5);

d. Provide adequate supervision in accordance with 922 KAR 2:120, Section 2(3);

e. Make toxic supplies inaccessible to a child in accordance with 922 KAR 2:120, Section 3(7); or

f. Maintain sufficient records on a child in accordance with 922 KAR 2:110, Section 3;

2. Releasing a child to a person who is not designated by the child's parent to pick up the child;

3. Leaving a child alone with an underage caregiver; or

4. Exceeding the staff-to-child ratios in 922 KAR 2:120, Section 2 by fifty (50) percent or more.

Section 3. Assessment of a Civil Penalty. (1) The cabinet shall assess a civil penalty in accordance with KRS 199.896(8) and KRS 199.990(4).

(2) A statement of deficiency shall be issued prior to, or concurrent with, the notice described in Section 4 of this administrative regulation.

(3) A statement of deficiency with a Type A violation shall be:

(a) Corrected within five (5) working days in accordance with 922 KAR 2:090, Section 9(3) and 9(8); and

(b) Subject to a civil penalty of no more than \$1000 for each occurrence of a Type A violation.

(4) A statement of deficiency with a Type B violation shall:

(a) Have a written corrective action plan within ten (10) days in accordance with 922 KAR 2:090, Section 9(2) and 9(3); and

(b) Be subject to a civil penalty of \$250 for each occurrence of a Type B violation.

(5) In accordance with KRS 199.896(8)(b)-(d), a licensee shall receive a monetary credit applied towards a civil penalty in the amount of:

(a) Fifty (50) dollars if a review of the licensee's history finds no Type A or Type B violation cited during the three (3) years prior to the date of the statement of deficiency;

(b) Fifty (50) dollars if the written corrective action plan is:

1. Received by the cabinet within the timeframe specified for the violation type pursuant to subsection (3)(a) or (4)(a) of this section; and

2. Accepted by the cabinet; or

(c) Twenty-five (25) percent of the civil penalty if the licensee waives appeal rights described in Section 5 of this administrative regulation.

(6) Treble penalties shall be assessed pursuant to KRS 199.990(4).

Section 4. Civil Penalty Requirements. [In addition to a violation of a requirement of the cabinet under the provisions of KRS 199.896, an offense subject to civil penalty shall include a violation of one (1) or more of the following regulatory requirements if the violation poses, at the time it occurs, an immediate threat to the health, safety, or welfare of a child served by a licensed child care facility:

(a) 922 KAR 2:090, Child care facility licensure;

(b) 922 KAR 2:110, Child care facility provider requirements; or

(c) 922 KAR 2:120, Child care facility health and safety standards.

(2) Notice that a civil penalty has been levied shall:

(1)[(a)] Be hand delivered by cabinet staff or delivered by certified mail, return receipt requested, to the:

(a) Licensee; or

(b) Director of the child-care center or the director's designee in accordance with 922 KAR 2:110; and [1. Owner; 2. Director; or 3. Person in charge of the licensed child-care facility;]

(2)[(b)] Specify:

(a)[1-] The violation for which a civil penalty has been levied;

(b)[2-] The amount of the civil penalty;

(c)[3-] That, in accordance with KRS 199.990(4), the civil penalty shall:

1.[a-] Not exceed \$1,000 for each occurrence;

2.[b-] Be made payable to the Kentucky State Treasurer; and

3. Be mailed to the Office of Inspector General;

(d)[4-] That an appeal of a civil penalty shall not act to stay correction of a violation, pursuant to KRS 199.896(7);

(e)[5-] That payment of a civil penalty shall be stayed if an appeal is requested; and

(f)[6-] That the cabinet may:

1. Deny, suspend, or revoke a license for the same offense for which a civil penalty is imposed; and

2. Take other action in accordance with KRS 199.896(9)[(3) The amount of the civil penalty shall be determined in accordance with KRS 199.896(8).

(4) Treble penalties shall be assessed pursuant to KRS 199.990(4)].

Section 5.[2-] Appeal Rights. (1) A licensee shall have appeal rights in accordance with KRS 199.990(4) and 922 KAR 2:090, Section 13[governs the taking of an appeal by a licensed child-care facility aggrieved by a cabinet action adverse to the licensee's interests].

(2) An appeal shall not limit the authority of the cabinet to:

(a) Issue an emergency order pursuant to KRS 13B.125(2); or

(b) Take action pursuant to KRS 199.896(9).

Section 6. Payment of Civil Penalty. (1) The cabinet shall deny an application for child-care center licensure or revoke a child-care center's license if:

(a) Sixty (60) days have lapsed since the latter of either:

1. The notice in accordance with Section 4 of this administrative regulation; or

2. Completion of the administrative appeal process upholding the civil penalty; and

(b) A licensee fails to:

1. Pay the civil penalty levied against the child-care center;

2. Enter into an arrangement to pay a civil penalty that is approved by the cabinet; or

3. Comply with the payment arrangement for the civil penalty.

(2) The cabinet may approve an amendment to a payment arrangement if:

(a) A request for an amendment is received from the licensee;

(b) The cabinet makes a determination that the payment arrangement creates a hardship for the licensee or the child-care center's operation with consideration given to:

1. The individual circumstances of the licensee or child-care center; and

2. Factors specified in KRS 199.896(8).

(3) The cabinet may terminate collection of a civil penalty if the:

(a) Licensee dies;

(b) Cabinet is unable to locate the licensee; or

(c) Cabinet's continued pursuit of the civil penalty would exceed the:

1. Amount of civil penalty; or

2. Public benefit.

TERESA C. JAMES, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: September 13, 2012

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

FILED WITH LRC: September 13, 2012 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on October 22, 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 October 15, 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 October 31, 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 the cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the penalties to be assessed for violations that pose an immediate threat, concern, or risk to a child served by a child-care center and related appeals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of the civil penalty and appeal processes used when a child-care center commits a violation or is subject to an adverse action from the cabinet.

(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 cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the civil penalty process for child-care centers to: more clearly establish violation types and associated penalties, provide for consistency with terminology and concurrent amendments to other administrative regulations governing licensure in Title 922 KAR Chapter 2, clarify notice and enforcement measures, and foster regulatory compliance and payment on the part of licensees. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure child-care centers adhere to minimal licensure standards and avoid operations that pose or inflict harm upon a child in care. The amendment enhances provisions for clarity and improved enforcement measures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to this administrative regulation conform to the content of the authorizing statutes through updates to the civil penalty process for child-care centers to: more clearly establish violation types and associated penalties, provide for consistency with terminology and concurrent amendments to other administrative regulations governing licensure in Title 922 KAR Chapter 2, clarify notice and enforcement measures, and foster regulatory compliance and payment on the part of licensees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regula-

tion will assist in the effective administration of the statutes by preserving and enhancing consistency with terminology and concurrent amendments to other administrative regulations governing licensure in Title 922 KAR Chapter 2; clarifying violation types, notice and enforcement measures; and fostering regulatory compliance and payment on the part of licensees for civil penalty procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed child-care center will be impacted by this administrative regulation. As of June 30, 2012, there were 2,315 Kentucky licensed child-care centers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation updates the civil penalty process for child-care centers to: more clearly establish violation types and associated penalties, provide for consistency with terminology and concurrent amendments to other administrative regulations governing licensure in Title 922 KAR Chapter 2, clarify notice and enforcement measures, and foster regulatory compliance and payment on the part of licensees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will entail no new costs for licensed child-care centers who maintain compliance with statutory and regulatory requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed child-care centers and the cabinet will benefit from more clearly establish violation types and associated penalties, consistency with terminology and concurrent amendments to other administrative regulations governing licensure in Title 922 KAR Chapter 2, and clarified notice and enforcement measures. Children and the public served by licensed child-care centers will benefit from regulatory compliance on the part of licensees.

(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: The Child Care and Development Fund Block Grant, state match for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase 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 directly establish any fees; rather, it references and supports the civil penalties procedures and enforcement per KRS 199.896 and KRS 199.990. This administrative regulation does not directly or indirectly increase any fees.

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

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are no federal statutes or regulations constituting the federal mandate.

2. State compliance standards. KRS 194A.050(1), 199.896(2)

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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? 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:

NEW ADMINISTRATIVE REGULATIONS

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

Office of Property Valuation

(New Administrative Regulation)

**103 KAR 5:220. Installment payment plan guidelines for third party purchasers of certificates of delinquency.**

RELATES TO: KRS 134.490(5)(h)

STATUTORY AUTHORITY: KRS 134.490(5)(h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.490 authorizes the Department of Revenue to promulgate administrative regulations to establish a process for an installment method of payment for the redemption of certificates of delinquency by a delinquent taxpayer. In compliance with this subsection, this new administrative regulation establishes a process by which third party purchasers shall grant installment payments and establishes the fee associated with this service.

Section 1. Definitions. (1) "Base amount" means the amount paid by a third-party purchaser for a certificate of delinquency.

(2) "Certificate of delinquency" has the same meaning as in KRS 134.010.

(3) "Default" means:

(a) The failure to pay on or within fifteen (15) days of a payment due date under a payment plan document; or

(b) Commencement of any legal action by a person other than the third-party purchaser affecting the title or requiring the sale of the subject property.

(4) "Department" means the Department of Revenue.

(5) "Optional certificate" means a certificate of delinquency that is not a qualifying certificate.

(6) "Payment plan" means a monthly installment plan described in the payment plan document.

(7) "Payment plan document" means the agreement between the property owner and the third-party purchaser detailing the terms of a payment plan.

(8) "Person" means any individual, corporation, business trust, estate, trust, partnership, limited liability entity, association, organization, joint venture, government, or any subdivision, agency or instrumentality thereof, or any other legal or commercial entity.

(9) "Processing fee" means a fee that may be imposed by a third-party purchaser for administering a payment plan. The processing fee shall not exceed eight (8) dollars per month during the term of the payment plan.

(10) "Property owner" means the "taxpayer" as defined in KRS 134.010, or any other owners of real property on which an outstanding certificate of delinquency is held by a third-party purchaser.

(11) "Qualifying certificate" means a certificate of delinquency purchased after June 1, 2012 by a third-party purchaser required to register with the department under KRS 134.129.

(12) "Subject property" means the property against which the lien related to a certificate of delinquency is attached.

(13) "Third-party purchaser" means a "third-party purchaser" as defined KRS 134.010. Third-party purchaser as used in this regulation also includes any assignee of a certificate of delinquency.

Section 2. Notice of Payment Plan Availability. (1) Any third-party purchaser who owns a qualifying certificate shall provide notice of the availability of a payment plan to the property owner as required by KRS 134.490(3)(d)5, unless the conditions established by Section 7 of this administrative regulation apply. The notice shall include, at a minimum, the following information:

(1) A statement that a payment plan is available upon written request from the property owner;

(2) The mailing address and the physical address where a request may be delivered. An electronic address may also be provided at the option of the third-party purchaser to accept requests in an electronic format;

(3) The date the certificate of delinquency was purchased by

the third-party purchaser as provided in KRS 134.128, or paid and assigned as provided in KRS 134.126(8); and

(4) A statement that the option to request a payment plan shall expire unless a written request for a payment plan is received by the third-party purchaser within twelve (12) months of the date the certificate of delinquency was purchased by the third-party purchaser.

Section 3. Submission and Review of Payment Plan Requests.

(1) Any property owner with property subject to a qualifying certificate may submit a written request for a payment plan to the third-party purchaser holding the qualifying certificate within twelve (12) months of the date the certificate of delinquency was purchased by the third-party purchaser as provided in KRS 134.128; or paid and assigned as provided in KRS 134.126(8). The request shall be made in accordance with the process established by the third-party purchaser.

(2) Upon receipt of a payment plan request, the third-party purchaser shall review the request, and if the request is timely and none of the conditions listed under Section 7 of this administrative regulation apply, the third-party purchaser shall prepare and deliver payment plan documents to the property owner in accordance with the provisions of this administrative regulation.

(3) Beginning with receipt of a request for a payment plan, and during the term of any payment plan, the third-party purchaser shall not assign the certificate of delinquency or undertake any enforcement remedies available under the law for the collection of the amount due on a certificate of delinquency. If the request for a payment plan is rejected because it is not timely or one of the conditions listed in Section 7 of this administrative regulation applies, or if the property owner defaults, the third-party purchaser may pursue any legal remedies available to the third-party purchaser under the law for collection of the amount due.

(4) A third-party purchaser may accept a request for a payment plan that is not timely filed. A payment plan entered into under this subsection shall be governed by the provisions of this administrative regulation.

Section 4. Payment Plan Requirements and Terms. (1) The payment plan shall provide for equal monthly installments, except the amount due in the final month may be adjusted to reconcile the total amount paid with the total amount due. The payment plan shall be offered for a minimum of twelve (12) months, unless the property owner requests a shorter term.

(2) The terms and conditions of the payment plan shall be established by a payment plan document, which shall be signed by the property owner and the third-party purchaser. The third-party purchaser shall provide a copy of the executed document to the property owner. The payment plan document shall be effective upon receipt by the third-party purchaser.

(3) The payment plan document shall include the following:

(a) A description of the subject property and the tax bill covered by the certificate of delinquency;

(b) The base amount due at the time the payment plan document is executed;

(c) The total amount of pre-litigation attorney fees and administrative fees incurred and accrued as provided in KRS 134.452 and due at the time the payment plan document is executed;

(d) The amount of interest accrued at the time the payment plan document is executed, calculated as provided in KRS 134.452 and 134.125;

(e) The term of the payment plan and number of monthly payments;

(f) The amount of interest that will accrue over the term of the payment plan, assuming payments are made according to the payment plan schedule;

(g) The amount of the monthly processing fee imposed;

(h) The monthly payment amount due, as determined as provided in Section 5 of this administrative regulation;

(i) The date the monthly payment amount is due;

(j) A statement that the payment plan will be considered in

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

default and may be terminated if payment is not received within fifteen (15) business days of the due date;

(k) Acceptable methods of payment;

(l) The mailing address and delivery address where payments are to be made, if the payments are to be mailed; and

(m) Any other terms and conditions mutually agreed upon by the property owner and third-party purchaser.

(3) The third-party purchaser may limit the method of payment accepted to those methods reasonably determined to ensure payment, provided that a third-party purchaser shall accept certified checks, cashier's checks and cash in payment. A third-party purchaser may at the discretion of the third-party purchaser, also accept ACH transfers, wire transfers, credit card, personal check, or other means of payment.

(4) The third-party purchaser shall not require more than one (1) payment per month.

Section 5. Calculation of the Monthly Amount Due and Crediting of Payments. (1) Interest shall be calculated during the term of the payment plan on the outstanding balance of the base amount as required by KRS 134.125.

(2) To determine the monthly payment due, the third-party purchaser shall include the following to establish the total amount due, and shall then calculate a monthly payment, with any adjustment necessary for payments to equal the total amount due made in the last month of the payment plan:

(a) The base amount due;

(b) Interest:

1. Accrued prior to the effective date of the payment plan; and

2. Calculated on the declining balance of the base amount over the term of the payment plan as provided in subsection (1) of this section.

(c) Pre-litigation attorney fees and administrative fees imposed under KRS 134.452 accrued at the time the payment plan is agreed to; and

(d) The monthly processing fee amount multiplied by the number of months the payment plan will be in effect.

(3) Payments shall be credited by the third-party purchaser on the day the payment is received.

(4) Payment amounts received shall be credited as follows:

(a) First, to the monthly processing fee, which shall become due on the first day of each calendar month;

(b) Second, to the interest due;

(c) Third, to outstanding pre-litigation attorney fees and administrative fees imposed under KRS 134.452 and included as part of the payment plan document; and

(d) Fourth, to reduce the base amount due.

(5) If multiple certificates of delinquency are included under one payment plan document, the third-party purchaser shall apply payments based on the earliest date of attachment of the lien to the subject property.

Section 6. Default. (1) Upon default by a property owner under a payment plan document, the payment plan shall be terminated and the third-party purchaser shall provide written notice of the default and termination to the property owner within fifteen (15) business days.

(2) The third-party purchaser may charge a processing fee for the month in which the default occurs, but shall not charge a processing fee for any subsequent month.

(3) In determining the outstanding amount due after a default, all payments received from the property owner and already credited as provided in Section 5 of this administrative regulation shall remain as credited under Section 5 of this administrative regulation. Any additional payments received after a default shall be applied as follows:

(a) First, to the payment of unpaid processing fees of the period prior to default, including the processing fee due in the month the default occurred;

(b) Second, to outstanding interest due;

(c) Third, to outstanding pre-litigation attorney fees and administrative fees imposed, as permitted under KRS 134.452 and included as part of the payment plan document; and

(d) Fourth, to reduce the base amount due.

Section 7. Conditions Under Which A Payment Plan Is Not Required. A third-party purchaser shall not be required to offer a payment plan to a property owner under the following circumstances:

(1) The property owner has previously defaulted on a payment plan with that third-party purchaser; or

(2) An agreed judgment, agreed order, or other court order is in place that addresses the payment of the underlying tax claim or claims covered by a certificate of delinquency.

Section 8. Optional Payment Plans. (1) A third-party purchaser who is not required to register with the department under KRS 134.129, or who holds optional certificates of delinquency may offer payment plans to property owners under the same terms, conditions, and requirements established by this administrative regulation.

(2) Any payment plan agreement between a third-party purchaser and a property owner in existence on the effective date of this administrative regulation shall remain in effect according to the terms of the existing agreement. The third-party purchaser shall not impose the processing fee authorized by this administrative regulation.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: August 31, 2012

FILED WITH LRC: September 4, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2012, from 10:00 a.m. to 12:00 p.m., in Room 383, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 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 October 31, 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: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Devon Hankins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides details about how a third party purchaser of certificates of delinquency will notify a delinquent taxpayer about the availability of an installment payment plan. It provides guidance on the terms and conditions of the installment payment plan and it specifies how payments are to be applied by the third party purchasers.

(b) The necessity of this administrative regulation: This regulation is needed to help ensure all third party purchasers of certificates of delinquency are consistent and equitable in the terms offered as part of the installment payment plans offered to delinquent taxpayers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 134.490(5) requires third party purchasers to offer an installment payment plan upon written request of a delinquent taxpayer. This regulation provides more details to the general requirements authorized by the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will help ensure that all payment plans offered by third party purchasers are fair and equitable to each delinquent taxpayer.

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

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(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: Third party purchasers of certificates of delinquency will be affected. For the 2012 calendar year, there are 115 third party purchasers registered with the Department of Revenue.

(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 third party purchasers will have to develop an installment payment plan agreement and they will likely need some reprogramming of existing collection software or a new software program that can accurately track the payments made by the taxpayer and calculate new balances as payments are made.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not known what costs will have to be incurred by the third party purchasers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More certificates of delinquency will be paid without having to resort to costly foreclosure proceedings.

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

(a) Initially: Minimal costs will be incurred by the Department of Revenue.

(b) On a continuing basis: Minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The minimal costs incurred can be absorbed in current budget appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No new fees will be administered by the Department of Revenue to implement this regulation. Third party purchasers will be entitled to an administrative fee not to exceed \$8 per month for each installment payment plan.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Third party purchasers are entitled to a monthly administrative fee not to exceed \$8 per month for each installment payment plan.

(9) TIERING: Is tiering applied? Tiering is not applied. Only third party purchasers as defined in KRS 134.010 shall be allowed to offer a payment plan under the terms established herein, and this regulation treats all third party purchasers the same.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue within the Finance and Administration Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 134.490 (5).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The costs associated with initially establishing this regulation will be minimal and will be absorbed into the department operating budget.

(d) How much will it cost to administer this program for subsequent years? Minimal to no 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 Board of Speech-Language Pathology and Audiology (New Administrative Regulation)

#### 201 KAR 17:110. Telehealth and telepractice.

RELATES TO: KRS 334A.200

STATUTORY AUTHORITY: KRS 334A.200

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.200 requires the Board of Speech Language Pathology and Audiology to adopt administrative regulations to further the objectives stated therein.

Section 1. Definitions. (1) "Client" is defined as the person receiving the services of the speech-language pathologist or audiologist and the representative thereof if required by law.

(2) "Telehealth" is defined by KRS 334A.200(3).

(3) "Telepractice" means the practice of speech language pathology or audiology as defined by KRS 334A.020(4) and KRS 334.020(6) respectively:

(a) Provided using an electronic communication technology; or

(b) Two (2) way, interactive, simultaneous audio and video.

Section 2. Client Requirements. A practitioner-patient relationship shall not commence via telehealth. An initial, in-person meeting for the practitioner and patient who prospectively utilize telehealth shall occur. A licensee who uses telehealth to deliver speech language pathology or audiology services or who telepractices shall, at the initial, in-person meeting with the client:

(1) Make reasonable attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically;

(3) Provide to the client alternative means of contacting the licensee other than electronically;

(4) Document if the client has the necessary knowledge and skills to benefit from the type of telepractice provided by the licensee;

(5) Inform the client in writing about:

(a) The limitations of using technology in the provision of telepractice;

(b) Potential risks to confidentiality of information due to technology in the provision of telepractice;

(c) Potential risks of disruption in the use of telepractice;

(d) When and how the licensee will respond to routine electronic messages;

(e) In what circumstances the licensee will use alternative communications for emergency purposes;

(f) Who else may have access to client communications with the licensee;

(g) How communications can be directed to a specific licensee; and

(h) How the licensee stores electronic communications from the client.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A licensee using telehealth to deliver services or who telepractices shall:

(1) Limit the telepractice to the area of competence in which proficiency has been gained through education, training, and experience;

(2) Maintain current competency in telepractice through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

(3) Document the client's presenting problem, purpose, or diagnosis;

(4) Use secure communications with clients, including encrypted text messages, via e-mail or secure Web sites, and not use personal identifying information in non-secure communications; and

(5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. (1) A licensee using telehealth to deliver speech language pathology and audiology services and telepractice shall comply with:

(a) State law by being licensed to practice speech language pathology or audiology, whichever is being telepracticed, in the jurisdiction where the practitioner-patient relationship commenced; and

(b) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.

(2) If a person provides speech language pathology and audiology services via telepractice to a person physically located in Kentucky at the time the services are provided, that provider shall be licensed by the Board.

(3) A person providing speech language pathology and audiology services via telepractice from a physical location in Kentucky shall be licensed by the Board. This person may be subject to licensure requirements in other states where the services are received by the client.

Section 5. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services or who telepractices:

(1) Shall not engage in false, misleading, or deceptive advertising of telepractice; and

(2) Shall not split fees.

ANNE OLSON, Board Chair

APPROVED BY AGENCY: September 11, 2012

FILED WITH LRC: September 12, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2012 at 10:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2012 at 11:59 pm ET. 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: Marcia Egbert, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes license fees and renewal requirements for speech language pathologists, audiologists, and speech-language pathology assistants.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 334A.200(2).

(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 generally.

(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 telehealth requirements for speech-language pathologists, audiologists, and speech-language pathology assistants.

(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2300 individuals are licensed by the Board. The vast majority, 1985, are speech-language pathologists.

(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 individuals identified in question (3) will be impacted only to the extent that they practice via telehealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

(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 licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish any new fees. Nor does it increase any existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 334A.080(3).

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

(a) 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.

(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 Board of Licensed Diabetes Educators  
(New Administrative Regulation)**

**201 KAR 45:010. Fees.**

RELATES TO: KRS 309.335

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.335 requires the board to promulgate an administrative regulation establishing the initial fee, annual fee and late renewal fee for licensure as a diabetes educator. This administrative regulation establishes fees for licensure as a diabetes educator.

Section 1. Licensure Fee. The fee for licensure as a diabetes educator shall be fifty (50) dollar annually.

Section 2. Renewal and Reinstatement. The following fees shall be paid for renewals and reinstatements for licenses issued by the board:

(1) The renewal fee on or before November 1 shall be fifty (50) dollars annually.

(2) The renewal fee after December 2 but before January 30 shall be the licensure fee as set forth in Section 1 of this administrative regulation, plus a twenty (20) dollar late fee.

(3) The reinstatement fee after January 30 of an expired license due to failure to renew shall be the licensure fee set forth in Section 1 of this administrative regulation plus fifty (50) dollars for each year since the date of last active licensure.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 14, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012 at 10:00 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished 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 October 31, 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: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Angela Evans, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the fees for licensure, renewal and reinstatement.

(b) The necessity of this administrative regulation: This regulation is necessary because it states the cost to obtain and maintain the license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations for the fees in KRS 309.335(1)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the fees for licensure, renewal and reinstatement.

(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 regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 250 individuals will apply for licensure within the next fiscal year, this regulation will also continue as new applicants apply for licensure.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 the administrative regulation or amendment: This administrative regulation requires applicants to pay a fee for initial licensure, renewal and reinstatement of the license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial licensure fee will be \$50. The renewal fee will be \$50 plus \$20 if the renewal is late. The reinstatement fee will be \$50 plus \$50 for each year since the license was last active.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will be issued a license if the applicant meets the requirements.

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

(a) Initially: The budget for the Board is unknown, as it has not begun collecting fees.

(b) On a continuing basis: The budget for the Board cannot be estimated for the future until the Board begins to collect fees.

(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 the fees paid by 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 establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish fees for licensure, renewal and reinstatement.

(9) TIERING: Is tiering applied? Tiering was not applied.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative pur-

poses within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.335

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue generated will depend on the number of applicants for the year. However, it is estimated the regulation will generate \$12,500 a 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 revenue will depend on the number of applicants for the subsequent years. However, it is estimated the regulation will generate \$12,500 a year.

(c) How much will it cost to administer this program for the first year? The board is currently charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

(d) How much will it cost to administer this program for subsequent years? It is expected the cost will be a minimum of \$1,000. The fee will be reviewed by the Office of Occupations & Professions when the Office is determining its own budget for the next biennium.

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

Revenues (+/-): N/A  
Expenditures (+/-): N/A  
Other Explanation: N/A

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Licensed Diabetes Educators  
(New Administrative Regulation)**

**201 KAR 45:020. Supervision and work experience.**

RELATES TO: KRS 309.335

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.330 to 309.339. KRS 309.335(1)(b) requires the board to promulgate an administrative regulation establishing the supervision and work experience requirements for licensure. This administrative regulation establishes the amount of work experience required for licensure and the qualifications to be a supervisor.

Section 1. Definitions. (1) "Supervisor" means a physician or nurse practitioner in good standing and actively practicing in family practice, pediatrics, or internal medicine; or an individual credentialed by the American Association of Diabetes Educators or the National Certification Board for Diabetes Educators as a Certified Diabetes Educator (CDE) or a Board Certified Advanced Diabetes Manager (BC-ADM).

(2) "Supervision" means extensive collaboration with the applicant during the applicant's work experience with individuals with diabetes.

(3) "Work experience" is defined as the hours spent performing the services and tasks and drafting documentation and reports necessary for providing diabetes education to a person with diabetes or the caregiver of someone with diabetes.

Section 2. Accumulation of Work Experience. (1) An applicant shall accumulate at least 750 hours of supervised work experience within five (5) years from the date of application for licensure, of which 250 hours shall have been obtained within the last twelve (12) months preceding licensure application.

(2) An individual accumulating work experience under supervision for the purpose of licensure shall not be in violation of KRS 309.327.

Section 3. Supervision. (1) The applicant shall interact with the supervisor no less than two (2) hours per month to discuss the applicant's work with clients and review the applicant's provision of diabetes self-management education.

(2) The hours of work experience and verification by the applicant and supervisor shall be documented on the Application for Licensure, Form DE-01 (09/2012).

Section 4. Documentation Requirements. Effective November 1, 2013, the applicant shall maintain documentation of work experience and supervision. This documentation shall be made available upon request and shall include the following:

- (1) Observations and dialogue;
- (2) The type of supervision provided, electronic, face-to-face or both;
- (3) The dates on which the supervision occurred; and
- (4) The number of hours worked by the applicant each month.

Section 5. Incorporation by Reference. (1) "Application for Licensure", Form DE-01, 09/2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 14, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012 at 10:00 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished 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 October 31, 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: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Angela Evans, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the work experience and supervision required for licensure.

(b) The necessity of this administrative regulation: This regulation is necessary because it explains the amount of work experience needed for licensure and the standards for supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations for the practice of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the definitions of work experience and supervision for applicants applying via the "Core Concepts Course" option.

(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: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 250 individuals will apply for licensure within the next fiscal year, this regulation will also continue as new applicants apply for licensure.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 the administrative regulation or amendment: This administrative regulation requires applicants to file the completed application setting forth how the individual meets the qualifications for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying will be established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will have their applications reviewed by the board.

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

(a) Initially: The budget for the board is unknown, as it has not begun collecting fees.

(b) On a continuing basis: The budget for the board cannot be estimated for the future until the board begins to collect fees.

(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 the fees paid by 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 establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees only the work experience and supervision requirements. There will be a fee to apply that is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.335

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue generated will depend on the number of applicants for the 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 revenue will depend on the number of applicants for the subsequent years.

(c) How much will it cost to administer this program for the first year? The Board is charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

(d) How much will it cost to administer this program for subsequent years? The board will be charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

#### GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (New Administrative Regulation)

#### 201 KAR 45:030. Renewal, reinstatement, and inactive status.

RELATES TO: KRS 310.041

STATUTORY AUTHORITY: KRS 310.041, 310.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.335 requires the board to promulgate administrative regulations establishing procedures for annual renewal and reinstatement of licenses. This administrative regulation establishes procedures for annual renewal and reinstatement of licenses.

Section 1. Regular Renewal. (1) A licensed diabetes educator shall submit the following to the board by November 1 of each year:

- (a) A completed Renewal Application, Form DE-02 (9/2012);
  - (b) Proof of the required continuing education as set forth in 201 KAR 45:040; and
  - (c) The renewal fee as set forth in 201 KAR 45:010.
- (2) If a license is not renewed by January 30 of the new licensure year, it shall automatically expire.

Section 2. Reinstatement. (1) An expired license shall be reinstated upon the licensee:

- (a) Paying the required fees set forth in 201 KAR 45:010; and
- (b) Submitting proof of compliance with the continuing education requirements as set forth in 201 KAR 45:040, for each year since the date of last active licensure. (2) An expired license may be reinstated within five (5) years of the date of expiration.

Section 3. Inactive Status. (1) A licensee may place his license in inactive status by submitting written notice to the board prior to November 1.

(2) A licensee may remain in inactive status for a maximum of five (5) years.

(3) The licensee shall continue to meet the annual continuing education requirements as established in 201 KAR 45:040.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 14, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012 at 10:00 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished 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



## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 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:** Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the process to renew and reinstate a license and place a license into inactive status.

(b) The necessity of this administrative regulation: This regulation is necessary because it explains how a licensee can renew his license before it expires, reinstate the license once it has expired and place it into an inactive status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish regulations for the licensing of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process to renew and reinstate a license and place a license into inactive status.

(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 regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 250 individuals will apply for licensure within the next fiscal year, this regulation will also continue as new applicants apply for licensure.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 the administrative regulation or amendment: This administrative regulation requires licensees to fill out an application for renewal and reinstatement, along with paying a fee. The licensee applying for inactive status will just fill out a form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying will be established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensee will be able to continue to practice diabetes education. The inactive license holder will not have to meet the regular requirements for licensure.

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

(a) Initially: The budget for the board is unknown, as it has not begun collecting fees.

(b) On a continuing basis: The budget for the board cannot be estimated for the future until the board begins to collect fees.

(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 the fees paid by 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 establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees but there will be a fee applied that is set in a separate regulation for renewal and reinstatement.

(9) TIERING: Is tiering applied? Tiering was not applied.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331 and KRS 309.335

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? The revenue generated will depend on the number of applicants for the 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 revenue will depend on the number of applicants for the subsequent years.

(c) How much will it cost to administer this program for the first year? The board is charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

(d) How much will it cost to administer this program for subsequent years? The board will be charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

### GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (New Administrative Regulation)

#### 201 KAR 45:040. Continuing education.

RELATES TO: KRS 309.337

STATUTORY AUTHORITY: KRS 309.331

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.337 requires the board to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes continuing education requirements for licensed diabetes educators.

Section 1. Accrual of Continuing Education Hours. (1)(a) The annual continuing education accrual period shall be from November 1 of each year to October 31 of the next year.

(b) Prior to renewal of a license for the next licensure period, a licensee shall have earned fifteen (15) hours of approved continuing education.

(2) No more than fifteen (15) hours of continuing education may be carried over into the next continuing education period.

(3) It shall be the responsibility of each licensee to finance the costs of continuing education.

#### Section 2. Methods of Acquiring Continuing Education Hours.

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(1) Continuing education hours for license renewal shall be applicable to diabetes and presented at a professional level that enhances the quality and effectiveness of diabetes self-management education.

(2) Licensees shall obtain their continuing education courses from any of the following continuing education providers or programs approved by the providers:

- (a) American Association of Diabetes Educators (AADE);
- (b) American Diabetes Association (ADA) Academy of Nutrition and Dietetics (AND);
- (c) Accreditation Council for Pharmacy Education (ACPE);
- (d) Accreditation Council for Continuing Medical Education (ACCME-AMA);
- (e) American Nurses Credentialing Center (ANCC);
- (f) American Academy of Family Physicians (AAFP) American Academy of Nurse Practitioners (AANP);
- (g) American Academy of Optometry (AAO);
- (h) American Academy of Physician Assistants (AAPA);
- (i) American Association of Clinical Endocrinologists (AACE);
- (j) American College of Endocrinology (ACE);
- (k) American College of Sports Medicine (ACSM);
- (l) American Medical Association (AMA) or its Kentucky affiliate;
- (m) American Nurses Association (ANA);
- (n) American Occupational Therapy Association (AOTA);
- (o) American Physical Therapy Association (APTA);
- (p) American Psychological Association (APA);
- (q) Commission on Dietetic Registration (CDR);
- (r) Council on Continuing Medical Education (CCME-AOA);
- (s) Council on Podiatric Medical Education (CPME-APMA);
- (t) International Diabetes Federation (IDF);
- (u) National Association of Clinical Nurse Specialists (NACNS);
- (v) National Association of Social Workers (NASW);
- (w) Kentucky Board of Nursing;
- (x) Kentucky Board of Pharmacy; and
- (y) Kentucky Board of Medical Licensure;

Section 3. Recordkeeping of Continuing Education Hours. (1) Every licensee shall maintain a record of all continuing education courses attended for two (2) years after attending the course. Appropriate documentation to be kept shall include:

- (a) Proof of attendance;
- (b) Date of activity;
- (c) Description of activity;
- (d) Total hours of instruction, excluding breaks; and
- (e) Names and professional qualifications of the presenters.

(2) Each licensee shall sign a statement on the Renewal Application form incorporated by reference in 201 KAR 45:030, indicating compliance with the continuing education requirements. A license shall not be renewed without licensee signing this sworn statement.

Section 4. Reconsideration. (1) A licensee may request the board reconsider its denial of a continuing education course by filing a written request with the board with and any additional documentation on the course in support of approval.

(2) A licensee shall file the request for reconsideration within thirty (30) calendar days of notification of the denial. The request will be reviewed by the board at its next regularly scheduled meeting.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 14, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012 at 10:00 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished 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 October 31, 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: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the continuing education required to maintain licensure.

(b) The necessity of this administrative regulation: Since licensees are required to obtain continuing education they must know what will be accepted for continuing education credit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations setting the requirements for continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the activities that are acceptable for continuing education and the licensee's duty to maintain records regarding the courses attended.

(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 regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board had not licensed any individuals yet, but it is estimated that 250 individuals will apply for licensure within the next fiscal year, this regulation will also continue as new applicants apply for licensure.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 the administrative regulation or amendment: This administrative regulation requires applicants to obtain continuing education to maintain their 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 of continuing education will vary based on the provider.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be able to maintain licensure and stay aware of the developments in the profession of diabetes educator.

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

(a) Initially: The budget for the Board is unknown, as it has not begun collecting fees.

(b) On a continuing basis: The budget for the Board cannot be estimated for the future until the Board begins to collect fees.

(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 the fees paid by 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 establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees.

(9) TIERING: Is tiering applied? Tiering was not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331 and 309.337

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year?

This administrative regulation will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? The Board is charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses.

(d) How much will it cost to administer this program for subsequent years? The Board will be charged an annual fee of \$1,000 by the Office of Occupations & Professions for the administrative services provided prior to the issuing of licenses for this biennium. The fee will be reviewed when determining the next biennium budget.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

#### GENERAL GOVERNMENT CABINET Kentucky Board of Licensed Diabetes Educators (New Administrative Regulation)

##### 201 KAR 45:050. Code of ethics.

RELATES TO: KRS 309.331, 309.339

STATUTORY AUTHORITY: KRS 309.331

NECESSITY, FUNCTION AND CONFORMITY KRS 309.331(1) requires the board to promulgate a code of ethics for licensed diabetes educators. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Patients. (1) A diabetes educator shall:

(a) Provide services with respect for the uniqueness, dignity and autonomy of each individual; and

(b) Advance and protect the welfare of the patient.

(2) A diabetes educator shall not recommend the use of a specific product or service based solely on the educator's relationship with the manufacturer of the product or provider of the service.

Section 2. Confidentiality. A diabetes educator shall respect

and guard the confidences of each patient, maintaining all records according to state and federal law. (1) A diabetes educator shall not disclose a patient confidence except:

(a) As mandated or permitted by law;

(b) If the diabetes educator is a defendant in a civil, criminal or disciplinary action arising from services provided, confidences may be disclosed only in the course of that action; or

(c) If a waiver has been obtained in writing, confidential information shall be revealed only in accordance with the terms of the waiver.

(2) A diabetes educator may use patient or clinical materials in teaching, writing, and public presentations if:

(a) A written waiver has been obtained in accordance with subsection (1)(c) of this section; or

(b) Appropriate steps have been taken to protect patient identity and confidentiality.

Section 3. Professional Competence and Integrity. Diabetes educator shall maintain standards of professional competence and integrity and hold himself/herself out in a manner that demonstrates honesty, integrity, and fairness and shall be subject to disciplinary action for:

(1) Having been subject to disciplinary action by another regulatory agency;

(2) Impairment due to mental incapacity or the abuse substances which negatively impacts the practice of diabetes education;

(3) Conviction, as used in KRS 309.339, of a felony or a misdemeanor;

(4) Refusing to comply with an order or request from the board;

(5) Failure to cooperate with the board by not:

(a) Furnishing in writing a complete explanation to a complaint filed with the board; or

(b) Appearing before the board at the time and place designated; or

(6) Failure to provide the board with new contact information within thirty (30) business days the changes is effective.

Section 4. Responsibility to Non-Diabetes Educators or Supervisees. A diabetes educator shall not permit personnel not licensed as diabetes educators to hold themselves out as competent to perform professional services beyond their level of training, experience, and competence.

Section 5. Financial Arrangements. (1) A diabetes educator shall make financial arrangements with a patient or third party payor that are reasonably understandable and conform to accepted professional practices.

(2) A diabetes educator shall:

(a) Not offer or accept payment for referrals;

(b) Not charge excessive fees for services;

(c) Disclose his fees to patients at the beginning of services; and

(d) Represent facts truthfully to patients and third party payors regarding services rendered.

Section 6. Advertising. A diabetes educator shall:

(1) Accurately represent his education, training, and experience relevant to his practice of diabetes education;

(2) Not make false, fraudulent, misleading, or deceptive claims or any statement intended to or likely to create an unjustified expectation.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: September 13, 2012

FILED WITH LRC: September 14, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012 at 10:00 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

This hearing is open to the public. Any person who wished 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 October 31, 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: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the code of ethics which all licensees shall abide by.

(b) The necessity of this administrative regulation: This regulation is necessary because it explains the standards to which each licensee will be held.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish a code of ethics for the profession.

(d) How this administrative regulation currently assists or will assist in the effective

administration of the statutes: This administrative regulation sets forth the behavior considered to be ethical and the behavior considered unethical and subject to discipline.

(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 regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

(d) How the amendment will assist in the effective and administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 250 individuals will apply for licensure within the next fiscal year, this regulation will also continue as new applicants apply for licensure.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 the administrative regulation or amendment: This administrative regulation requires applicants to maintain confidentiality, report discipline from other licensing agencies, truthfully advertise services and make financial arrangements are reasonable.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All licensees will be held to the same standard of practice and know the actions that are subject to discipline.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(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 the fees paid by 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 fees are

necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331 and 309.339

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

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

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Technical and Administrative Support (Repealer)

#### 418 KAR 1:031. Repeal of 418 KAR 1:030.

RELATES TO: KRS 146.200-146.360, 146.550-146.570

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560 authorizes the Board to promulgate administrative regulations as are deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. The Cabinet is repealing 418 KAR 1:030 in order to combine 418 KAR 1:030 and 418 KAR 1:040.

Section 1. 418 KAR 1:030, State Agency Projects, is hereby repealed.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 12, 2012

FILED WITH LRC: September 13, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2012 at 10:00 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing October 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 October 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email: [Michael.Mullins@ky.gov](mailto:Michael.Mullins@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will repeal 418 KAR 1:030.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 418 KAR 1:030. 418 KAR 1:030 is being repealed in order to combine 418 KAR 1:030 and 418 KAR 1:040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.310 directs administrative bodies to repeal administrative regulations that are no longer necessary or required. This administrative regulation repeals 418 KAR 1:030, relating to state agency projects.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals 418 KAR 1:030 whose contents are being relocated into another administrative regulation. This information will be combined with 418 KAR 1:040.

(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 remove definitions that are no longer used as well as provide updated information to current definitions. The amendments will also correct language to ensure the administrative regulation conforms to current KRS 13A standards.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to remove definitions that are no longer used as well as provide updated information to current definitions. The amendments will also correct language to ensure the administrative regulation conforms to current KRS 13A standards.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments not only ensure terms defined in the administrative regulation are used in the chapter but also update the administrative regulation to current KRS 13A standards.

(d) How the amendment will assist in the effective administration of the statutes: The amendments remove terms that are no longer used as well as updating terms that are currently used.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact Kentucky state agencies, colleges and universities, and Kentucky local governments that are interested in applying for grants from the Heritage Land Conservation Fund. There were approximately 20 grants applications for FY 2012.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities from listed in questions (3) will be required to use the amended definitions in the administrative regulation to interpret 418 KAR Chapter 1.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any additional cost for entities to comply with the amendments to this administrative regulation.

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

that are accurate terms for the interpretation of 418 KAR Chapter 1.

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

(a) Initially: The amendments to this administrative regulation will not require any additional cost to be absorbed by the administrative body.

(b) On a continuing basis: There will be no continuing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded from the Heritage Land Conservation 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 need to increase fees or funding to administer this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? No. All applicants for grant funding will be treated equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Technical and Administrative Support, the Heritage Land Conservation Fund Board and those agencies listed in KRS 146.570(4).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.550 through 146.570.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any funds for use by the cabinet.

(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 funds for use by the cabinet on a continuing basis.

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

(d) How much will it cost to administer this program for subsequent years? There are no additional costs associated with this amendment on a continuing basis.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

#### **PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction (New Administrative Regulation)**

#### **815 KAR 22:010. Requirements for approval of continuing education courses and providers.**

RELATES TO: KRS 198B.6401, 198B.6405, 198B.6409, 198B.6411, 198B.6415, 198B.6417

STATUTORY AUTHORITY: KRS 198B.6409

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.6409 authorizes the department to promulgate an administrative regulation to establish requirements for approval of continuing

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

education programs and continuing education courses for certified fire sprinkler inspectors. This administrative regulation establishes the requirements for approval of continuing education programs and continuing education courses.

Section 1. Requirements for Continuing Educational Provider Approval. (1) Continuing Education Providers, other than the Department, shall either be a:

- (a) Trade Association with affiliation to the Fire Protection System Trade;
- (b) Trade school;
- (c) College;
- (d) Technical school;
- (e) Business dedicated solely to providing continuing education and that provides at least one (1) course in each of the congressional districts quarterly;
- (f) Fire Protection System company that employs full-time training personnel to conduct continuing education programs providing continuing education for fire protection system personnel only; or
- (g) Fire Protection System manufacturer or distributor that employs full time training personnel to conduct continuing education programs providing continuing education for fire protection system personnel only.

(2)(a) Each continuing education course provider shall register with the department as required by subsection (3) of this section before submitting course materials for department approval.

(b) Registration shall be valid for two (2) years from the date of issuance.

(3) Course providers shall register on Form FPS-33-03 Application for Approval as a Continuing Education Course Provider for Certified Fire Sprinkler Inspectors and shall include the following:

- (a) Company name;
- (b) Contact person;
- (c) Mailing address;
- (d) Email address;
- (e) Telephone number; and
- (f) Fax number.

(4) The department shall maintain a list of approved continuing education course providers.

(5) Each course provider shall report to the department a change to the information submitted in the initial application within thirty (30) days after the change takes effect.

(6) For each course approved, the provider shall distribute a questionnaire to each applicant in attendance for the purpose of rating the course.

Section 2. Continuing Education Course Approval. (1) A separate application for approval shall be submitted to the department on Form FPS-33-04, Application for Continuing Education Course for Certified Fire Protection System Inspectors, for each course offered by the course provider.

(2)(a) A Form FPS 33-33-04, Application for Continuing Education Course for Certified Fire Protection System Inspectors, shall be submitted only by an approved provider registered with the department; and

(b) Shall be submitted at least sixty (60) days prior to the course's offering.

(3) A continuing education course shall provide instruction in fire protection system inspection standards as required by KRS 198B.6411.

(4) The course application shall include the following:

- (a) Name of the course;
- (b) Name and registration number of the provider;
- (c) A course syllabus;
- (d) Name of the instructor or presenter along with his or her qualifications;
- (e) The amount of actual time needed to present the course;
- (f) The objectives of the course; and
- (g) A statement of the practicality of the course to the fire protection system trade trade.

(5) Content changes made to the course shall require a subsequent submission to the department for review and approval or denial.

(6) Course approval shall be valid for two (2) years from the date of department approval.

(7)(a) The department shall issue a course number for each approved course.

(b) The course number and the provider's number shall appear on all advertisements and certificates for the course.

(8) A provider shall submit to the department a quarterly schedule including dates and locations of courses by January 1, April 1, July 1, and October 1 annually.

(9) The department shall receive notification of scheduling changes at least ten (10) working days prior to the originally scheduled course date by fax or e-mail to the Fire Protection System section of the department.

(10) Cancellations.

(a) The provider shall give notice of cancellation no less than five (5) working days prior to scheduled classes unless the governor declares a state of emergency or other conditions exist that would preclude a five (5) day notification of cancellation.

(b) If a scheduled class is cancelled, the registrant shall have the option to attend a rescheduled class or receive a full refund for the cancelled class from the provider.

(c) A registrant who notifies a provider of registration cancellation prior to five (5) working days of a scheduled course may choose either a full refund or to attend a subsequent course.

Section 3. Continuing Education Course Records. (1) Each registered course provider shall establish and maintain for at least three (3) years the following records for each approved course:

(a) Certificates of completion as provided in subsection (2) of this section;

- (b) An attendance sign-in and sign-out sheet; and
- (c) A course syllabus.

(2) Certificates of completion.

(a) Each registered course provider shall issue a certificate of completion for each participant who enrolled and completed an approved continuing education course.

(b) A certificate of completion shall contain the following information about the individual participant:

- 1. Name;
- 2. Address;
- 3. License number;
- 4. Date of attendance; and
- 5. Course completed.

(c) One (1) copy of the certificate of completion shall be:

- 1. Sent to the department electronically;
- 2. Retained on file by the provider in compliance with subsection (1) of this section of this section; and
- 3. Given to the participant upon completion of the course.

Section 4. Course Audits. (1) Records requested in writing by the department shall be delivered to the department within ten (10) days of the requesting date.

(2) Representatives of the department shall not be prohibited from attending an approved continuing education course to ensure that:

- (a) The course meets the stated objectives; and
- (b) Applicable requirements are being met.

Section 5. Disciplinary Action. Provider approval shall be revoked if the provider:

(1) Obtains, or attempts to obtain, registration or course approval through fraud, false statements, or misrepresentation;

(2) Does not provide complete and accurate information in either the initial registration or in notification of changes to the information;

(3) Advertises a course as being approved by the department prior to receiving approval; or

(4) Fails to comply with the requirements of this administrative regulation.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

## VOLUME 39, NUMBER 4 – OCTOBER 1, 2012

(a) "Application for Approval as a Continuing Education Course Provider for Certified Fire Protection System Inspectors", Form FPS-33-03, September 2012; and

(b) "Application for Continuing Education Course for Certified Fire Protection System Inspectors", Form FPS-33-04, September 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Fire Protection System Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY:

FILED WITH LRC: September 14, 2012

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2012, at 10:00 a.m., EST, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 17, 2012 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 October 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, Ext. 144, fax (502) 573-1057

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for approval of Fire Sprinkler Inspector continuing education providers and courses.

(b) The necessity of this administrative regulation: KRS 198B.6409 authorizes the department to promulgate administrative regulations to establish the criteria for approval of continuing education providers and continuing education courses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for approval as a Fire Sprinkler Inspector continuing education provider and continuing education courses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for continuing education providers and continuing education providers to gain approval as authorized by KRS 198B.6409.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, Fire Protection

Sprinkler Section, certified fire sprinkler inspectors, and continuing education providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Fire sprinkler inspector continuing education providers shall submit an application for approval as a provider and for each course to be administered by the provider. Additionally, the advance notice for amending class schedules for fire sprinkler inspector education courses established affords flexibility to course providers.

(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 fees established for the application of becoming a fire sprinkler inspector continuing education provider nor for approval of continuing education courses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include flexibility in scheduling of fire sprinkler inspector continuing education courses required for renewal of certification.

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

(a) Initially: There are no new costs associated with the implementation of this administrative regulation.

(b) On a continuing basis: There are no new costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing Fire Prevention Sprinkler fund (restricted funds) will be utilized for the administration of approving fire sprinkler inspector continuing education providers and continuing education courses.

(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: Implementation of this new administrative regulation will not necessitate an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: This administrative regulation does not establish new fees nor will it directly or indirectly increase existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation; all fire sprinkler inspector continuing education provider and course applicants are treated equally under the provisions of this administrative regulation.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Fire Protection Sprinkler Section will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.6409.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes no new revenues, and expenditures are anticipated to be minimal (including limited increase in postage) and existing Department of Housing, Buildings and Construction staff time to review/process applications.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None directly.

**VOLUME 39, NUMBER 4 – OCTOBER 1, 2012**

(c) How much will it cost to administer this program for the first year? The costs to administer the approval of fire sprinkler inspector continuing education providers and courses are anticipated to be minimal and covered within existing expenditures, with existing staffing.

(d) How much will it cost to administer this program for subsequent years? The costs to administer the approval of fire sprinkler inspector continuing education providers and courses are anticipated to be minimal and covered within existing expenditures, with existing staffing.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: There is no anticipated fiscal impact from this new administrative regulation to state or local government.



ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of September 17, 2012

**Call to Order and Roll Call**

The September meeting of the Administrative Regulation Review Subcommittee was held on Monday, September 17, 2012, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Joe Bowen, Co-chair, called the meeting to order, the roll call was taken. The minutes of the August 2012 meeting were approved.

**Present were:**

Members: Senators Joe Bowen, David Givens, Alice Forgy Kerr, and Joey Pendleton, and Representatives 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: Jennifer Jones, Kentucky Retirement Systems; Carol Borden, Board of Nursing; Pam Duncan, Dr. Sandy Hunter, Bill Young, Board of EMS; Janine Coy-Geeslin, Katie Smith, Cabinet for Economic Development; Ann D'Angelo, Godwin Onodu, Transportation Cabinet; Amy Barker, Department of Corrections; Dawn Bellis, David Moore, Department of Housing, Buildings and Construction; Karen Chrisman, Governor's Office of Electronic Health Information; Stephanie Brammer-Barnes, Van Ingram, Cabinet for Health and Family Services; Mary Sparrow, and Steven Veno, Division of Child Support Investment.

**The Administrative Regulation Review Subcommittee met on Monday, September 17, 2012, and submits this report:**

**Administrative Regulations Reviewed by the Subcommittee:**

**FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules**

105 KAR 1:400 & E. Federal taxation limitation year. Jennifer Jones, interim general counsel, represented the retirement systems.

In response to a question by Co-Chair Bowen, Ms. Jones stated that these administrative regulations did not relate to the Pension Task Force or to legislation pending with the General Assembly. These administrative regulations were being amended to comply with federal requirements as part of the two (2) economic recovery acts. Every five (5) years the retirement system was required to submit determination letters to the IRS. As part of this round of determination letters, the retirement system was required to show that these amendments had been made.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 6 through 11 and 13 through 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:420. 401(h) account established under 26 USC 401(h).

In response to a question by Senator Givens, Ms. Jones stated that the payment priority option established in this administrative regulation was required by federal and state law.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct statutory citations; and (2) 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.

105 KAR 1:430. General compliance with federal tax laws.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**GENERAL GOVERNMENT CABINET: Board of Nursing: Board**

201 KAR 20:230. Renewal of licenses. Carol Borden, executive legal assistant, represented the board.

201 KAR 20:370. Applications for licensure.

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Board of Emergency Medical Services: Board**

202 KAR 7:601. Training, education, and continuing education. Pam Duncan, legal counsel; Dr. Sandy Hunter, professor; and Bill Young, director of EMS education, represented the board.

In response to a question by Senator Givens, Ms. Duncan stated that this administrative regulation had not been updated for a long time. A task force had been convened to develop updates to this program. Mr. Young stated that these revisions brought this program up-to-date with national standards. Kentucky did not previously have an advanced EMT program, and the addition of an advanced EMT program would benefit Kentucky, especially its smaller communities. Dr. Hunter stated that this administrative regulation moved Kentucky closer to the board's goal of national accreditation. This administrative regulation was extensively vetted by stakeholders.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add statutory citations; (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; (3) to amend Sections 1 through 24 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend Section 25 to add and revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

**CABINET FOR ECONOMIC DEVELOPMENT: Kentucky Economic Development Finance Authority: Economic Development**

306 KAR 1:011. Repeal of 306 KAR 1:010, 1:020, 1:030, 1:040, 1:050, 1:060, 1:070 and 1:090. Janine Coy-Greeslin, staff attorney, and Katie Smith, executive director, represented the authority.

**Kentucky Economic Development Finance Authority**

307 KAR 1:005. Applications for Kentucky Incentive Programs.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 5 to: incorporate by reference the required instruction sheet for the application forms. Without objection, and with agreement of the agency, the amendments were approved.

307 KAR 4:020. Kentucky Enterprise Initiative Act.

**Kentucky Business Investment Program**

307 KAR 8:011. Repeal of 307 KAR 8:010.

**Kentucky Reinvestment Act (KRA)**

307 KAR 9:010. Application for Kentucky Reinvestment Act Program.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary**

501 KAR 6:230. Little Sandy Correctional Complex. Amy Barker, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to: (1) correct citations; (2) clarify provisions; and (3) comply

with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to: (1) clarify provisions; and (2) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:999. Corrections secured policies and procedures.

This administrative regulation was reviewed and amended, without objection and with agreement of the agency, by the Subcommittee in closed session pursuant to KRS 61.810(1)(k), 61.815(2), and 197.025(6).

#### **Asset Forfeiture**

501 KAR 11:011. Repeal of 501 KAR 11:010.

#### **TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Vehicle Licensing: Motor Vehicle Tax**

601 KAR 9:090. Procedures for inspecting vehicles. Ann DAngelo, assistant general counsel, and Godwin Onodu, assistant director, represented the division.

In response to a question by Co-Chair Bowen, Mr. Onodu stated that candidates for certified inspectors were nominated by local sheriffs. A certified inspector inspected vehicles for road worthiness and for transfer into Kentucky from other states. The division conducted the training and certified qualified candidates nominated by local sheriffs.

#### **PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing**

815 KAR 20:034. Requirements for approval of continuing education courses and providers. Dawn Bellis, general counsel, and David Moore, director, represented the division.

#### **Division of Building Codes Enforcement: Electrical**

815 KAR 35:020. Electrical inspections. Dawn Bellis, general counsel, represented the division.

In response to questions by Representative Ford, Ms. Bellis stated that this administrative regulation distinguished if an electrical inspection was optional or mandatory and created consistency statewide. In particular, there had been confusion regarding agricultural poultry houses. This administrative regulation clarified the different types of agricultural poultry houses and which were required to be inspected.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to delete requirements already contained in KRS 227.460; (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 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 amendment was approved.

#### **CABINET FOR HEALTH AND FAMILY SERVICES: Governor's Office of Electronic Health Information: Kentucky Health Information Exchange**

900 KAR 9:010. Kentucky health information exchange participation. Karen Chrisman, staff attorney, represented the office.

In response to a question by Co-Chair Bowen, Ms. Chrisman stated that the questions from the August meeting of the Interim Joint Committee on Health and Welfare pertained to the health insurance exchange program. This administrative regulation established provisions for the health information exchange program, which providers had been using for years. This administrative regulation established contract requirements commensurate with current practices. It provided continuity of health care by facilitating dissemination of health care information among providers. The intent was to reduce duplication of services, especially laboratory testing, imaging, and immunization.

Representative Damron stated that this administrative regulation was the result of telehealth legislation from the early 2000s and was not part of the federal Affordable Care Act. Over eighty

(80) providers were already participating. This administrative regulation enhanced immunization records to avoid unnecessary re-immunizations.

Representative Lee stated that this administrative regulation and accompanying program was in its infancy, but would save money by avoiding unnecessary duplicative tests and immunizations. Electronic health records were used by most hospitals already. Representative Lee heartily endorsed this administrative regulation, but noted that the cabinet still needed to enhance confidentiality. The General Assembly needed to continue to support and fund this program. The cost-savings was only one issue of concern. Patients who may not be able to explain previous tests were also suffering unnecessary physical pain and suffering.

In response to questions by Senator Givens, Ms. Chrisman stated that HIPAA regulations developed a definition for "participant". The definition was very restrictive and included stringent security provisions, which were now enhanced as a result of the HITECH Act. Billing offices could not access personal health information. Only treatment providers who had proven treatment status could access personal health information. The cabinet had hired an outside security agency to prevent hacking and other security breaches. That vendor had a hacker on staff to search for system weaknesses, and the security monitoring was an on-going process. Staff and stakeholders were developing a cost-savings analysis, but that data was not yet available, although there was anecdotal evidence to support the hypothesis that the program would overall be a money saver. Other states and national groups had their own health information exchange systems, which seemed to be successful. The program was currently funded through a grant from the Office of the National Coordinator for Health Information Technology (ONC). Sustainability for future costs was being researched. Medicaid and payors would experience savings.

Senator Givens stated that the cabinet should engage providers in the cost-savings issues.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (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; (3) to amend Sections 1, 2, 3, 4, 5, 8, and 9 and the forms incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend Section 9 to incorporate by reference the document called "HITSP Summary Documents Using HL7 Continuity of Care (CCD) component", version 2.5, July 8, 2009. Without objection, and with agreement of the agency, the amendments were approved.

#### **Office of Inspector General: Division of Audits and Investigations: Office of Inspector General**

906 KAR 1:160 & E. Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine. Stephanie Brammer-Barnes, policy analyst, and Van Ingram, executive director, represented the division.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3 to specify citations and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Department for Income Support: Child Support Enforcement: Family Support**

921 KAR 1:001. Definitions. Mary Sparrow, supervisor, and Steven Veno, deputy commissioner, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 1 to place the definitions in alphabetical order. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 1:380. Child Support Enforcement Program application and intergovernmental process.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to correct citations. With-

out objection, and with agreement of the agency, the amendments were approved.

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

921 KAR 1:410. Child support collection and enforcement.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 to require the cabinet to submit a delinquent obligor's list to the Attorney General. Without objection, and with agreement of the agency, the amendments were approved.

**Other Business:** Co-Chair Bowen encouraged all Subcommittee members to contact staff if an absence from a Subcommittee meeting is expected. Additionally, each member should be directly contacted and polled by Subcommittee staff prior to the meeting of attendance expectations.

Senator Pendleton stated that administrative regulations pursuant to HB 1 from the 2012 Special Session of the General Assembly were being misinterpreted, with the result being that senior citizens were being refused medication without first being subjected to drug screening. Some were driving to other states to get their prescriptions, even though these patients had been on these medications for many years. Senator Pendleton urged those concerned to submit public comments during the public comment period for these administrative regulations. Some senior citizens were testing positive for drug use because they had been taking legally prescribed medications for pain management. The testing was expensive. It seemed unfair that criminals were screened for drug use at the state's expense, while innocent seniors were being charged for unnecessary screening. Senator Pendleton urged a cessation of drug screening pursuant to HB 1 of the Special Session of the General Assembly.

Subcommittee staff stated that administrative regulations pursuant to HB 1 of the Special Session of the General Assembly were being considered by the promulgating agencies for public comment during the month of September, and the deadline for written comments was October 1, 2012. These administrative regulations were filed as both ordinary and emergency administrative regulations. It was possible to amend the ordinary, but not the emergency, versions of these administrative regulations.

Representative Damron commended the Inspector General for addressing problems pertaining to the drug screening. The Inspector General had done an admirable job in educating providers, patients, and agencies regarding the enforcement ramifications of these administrative regulations. Some providers may have misunderstood the requirements and therefore been overzealous in requiring the drug screening. Other providers may have intentionally required unnecessary screening to oppose HB 1 of the Special Session of the General Assembly. It may be necessary for the General Assembly to clarify the law; however, the repeal of HB 1 of the Special Session of the General Assembly was unnecessary and unanticipated.

**The following administrative regulations were deferred to the October 9, 2012, meeting of the Subcommittee:**

**ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities**

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need**

900 KAR 6:085. Implementation of outstanding Certificate of Need when ownership has changed.

**The Subcommittee adjourned at 11:45 a.m. until October 9, 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 ON VETERANS, MILITARY AFFAIRS, AND PUBLIC PROTECTION**  
**Meeting of August 21, 2012**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Veterans, Military Affairs, and Public Protection for its meeting of August 21, having been referred to the Committee on August 1, pursuant to KRS 13A.290(6):

106 KAR 2:030

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 August 21 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT**  
**Meeting of September 6, 2012**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of September 6, 2012, having been referred to the Committee on September 5, 2012, pursuant to KRS 13A.290(6):

405 KAR 10:011 & E  
405 KAR 10:015 & E  
405 KAR 10:030  
405 KAR 16:020

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 September 6, 2012 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON EDUCATION**  
**Meeting of September 10, 2012**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of September 10, 2012, having been referred to the Committee on September 5, 2012, pursuant to KRS 13A.290(6):

16 KAR 2:120  
703 KAR 5:070  
703 KAR 5:225

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:

703 KAR 5:070

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 10, 2012 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**VOLUME 39, NUMBER 4 – OCTOBER 1, 2012**

**INTERIM JOINT COMMITTEE ON AGRICULTURE  
Meeting of September 14, 2012**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture for its meeting of September 14, 2012, having been referred to the Committee on September 5, 2012, pursuant to KRS 13A.290(6):

302 KAR 16:091

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 September 14, 2012 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE  
Meeting of September 19, 2012**

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 September 19, 2012, having been referred to the Committee on September 5, 2012, pursuant to KRS 13A.290(6):

201 KAR 2:340  
201 KAR 22:040  
201 KAR 22:045  
910 KAR 1:190

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 19, 2012 meeting, which are hereby incorporated by reference.

## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates

D - 2

The Locator Index lists all administrative regulations published in VOLUME 39 of the *Administrative Register of Kentucky* from July 2012 through June 2013. 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 38 are those administrative regulations that were originally published in VOLUME 38 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2012 Kentucky Administrative Regulations Service* was published.

### KRS Index

D - 8

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 39 of the *Administrative Register of Kentucky*.

### Technical Amendment Index

D -14

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the *2012 Kentucky Administrative Regulations Service*. 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 of Kentucky*.

### Subject Index

D -15

The Subject Index is a general index of administrative regulations published in VOLUME 39 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
<b>VOLUME 38</b>					
The administrative regulations listed under VOLUME 38 are those administrative regulations that were originally published in Volume 38 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2012 Kentucky Administrative Regulations Service</i> was published.					
<b>SYMBOL KEY:</b>			Amended	1788	
* Statement of Consideration not filed by deadline			AmComments	1974	(See 39 Ky.R.)
** Withdrawn, not in effect within 1 year of publication			301 KAR 2:041		
*** Withdrawn before being printed in Register			Amended	1879	(See 39 Ky.R.)
**** Emergency expired after 180 days			301 KAR 2:049		
(r) Repealer regulation: KRS 13A.310-on the effective			Amended	1883	(See 39 Ky.R.)
date of an administrative regulation that repeals			301 KAR 2:081		
another, the regulations compiler shall delete the			Amended	1887	(See 39 Ky.R.)
repealed administrative regulation and the repeal-			301 KAR 2:082		
ing administrative regulation.			Amended	1893	(See 39 Ky.R.)
-----			301 KAR 2:084		
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>			Amended	1898	(See 39 Ky.R.)
(Note: Emergency regulations expire 180 days from the			301 KAR 2:300		
date filed; or 180 days from the date filed plus			Amended	1899	(See 39 Ky.R.)
number of days of requested extension, or upon			301 KAR 3:022		
replacement or repeal, whichever occurs first.)			Amended	1903	(See 39 Ky.R.)
			301 KAR 2:251		
103 KAR 31:170E	1934	5-11-12	Amended	1661	
Replaced	458	10-5-12	As Amended	1948	6-7-12
405 KAR 10:011E(r)	1935	5-4-12	304 KAR 1:040		
405 KAR 10:015E	1937	5-4-12	Amended	2002	(See 39 Ky.R.)
921 KAR 2:015E	1429	12-29-11	304 KAR 1:080	2110	(See 39 Ky.R.)
Replaced	1969	6-20-12	304 KAR 1:410	1974	
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>			405 KAR 10:015	2111	(See 39 Ky.R.)
11 KAR 3:100			405 KAR 10:030		
Amended	1977	(See 39 Ky.R.)	Amended	2004	(See 39 Ky.R.)
101 KAR 2:102			405 KAR 16:020		
Amended	1171	7-6-12	Amended	2007	(See 39 Ky.R.)
101 KAR 2:140			501 KAR 6:020		
Amended	1176		Amended	1905	(See 39 Ky.R.)
As Amended	1944	7-6-12	501 KAR 6:050		
101 KAR 3:015			Amended	2011	(See 39 Ky.R.)
Amended	1178	7-6-12	501 KAR 6:090		
103 KAR 8:010			Repealed	1808	7-6-12
Amended	73		501 KAR 6:091(r)	1808	7-6-12
As Amended	1297		501 KAR 6:110		
103 KAR 31:170	2107	(See 39 Ky.R.)	Amended	2013	
106 KAR 2:030	2108	(See 39 Ky.R.)	501 KAR 6:200		
201 KAR 8:562			Amended	1791	
Amended	1870	(See 39 Ky.R.)	As Amended	1951	7-6-12
201 KAR 13:040			501 KAR 6:240		
Amended	1875	(See 39 Ky.R.)	Amended	1793	
201 KAR 18:220			As Amended	1953	7-6-12
Amended	1991	8-31-12	501 KAR 6:260	1916	(See 39 Ky.R.)
201 KAR 20:450			501 KAR 6:280	1918	(See 39 Ky.R.)
Amended	1994	(See 39 Ky.R.)	503 KAR 1:110		
201 KAR 20:490			Amended	1795	
Amended	1764		As Amended	1953	7-6-12
As Amended	1945	6-20-12	503 KAR 3:070		
201 KAR 20:510			Amended	1665	
Amended	1997	8-15-12	As Amended	1956	7-6-12
201 KAR 23:015			601 KAR 1:018		
Amended	1767		Amended	1487	
As Amended	1947	6-20-12	As Amended	1957	7-6-12
201 KAR 30:050			601 KAR 1:019	1399	
Amended	1768		As Amended	1962	7-6-12
As Amended	1947	7-6-12	702 KAR 1:160		
201 KAR 32:035			Amended	1799	(See 39 Ky.R.)
Amended	1877	(See 39 Ky.R.)	703 KAR 5:002(r)	1401	(See 39 Ky.R.)
202 KAR 7:601			703 KAR 5:070		
Amended	1770	(See 39 Ky.R.)	Amended	1907	(See 39 Ky.R.)
301 KAR 1:201			703 KAR 5:140		
Amended	1783	6-7-12	Amended	1391	(See 39 Ky.R.)
301 KAR 1:410			703 KAR 5:220	707	
			703 KAR 5:225	1919	(See 39 Ky.R.)

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
703 KAR 5:240	1407	(See 39 Ky.R.)	811 KAR 1:090		
704 KAR 3:340			Amended	2068	(See 39 Ky.R.)
Amended	1909	(See 39 Ky.R.)	811 KAR 1:093	2118	8-30-12
704 KAR 5:070	1410	(See 39 Ky.R.)	811 KAR 1:095		
803 KAR 2:300			Amended	2077	(See 39 Ky.R.)
Amended	2016	8-31-12	811 KAR 2:093	2119	8-31-12
803 KAR 2:307			811 KAR 2:096		
Amended	2018	8-31-12	Amended	2084	(See 39 Ky.R.)
803 KAR 2:309			811 KAR 2:100		
Amended	2021	8-31-12	Amended	2093	(See 39 Ky.R.)
803 KAR 2:313			815 KAR 6:010		
Amended	2023	(See 39 Ky.R.)	Amended	1498	
803 KAR 2:316			Amended	1866	
Amended	2025	8-31-12	As Amended	1966	7-6-12
803 KAR 2:317			815 KAR 6:070	1521	
Amended	2027	8-31-12	As Amended	1968	
803 KAR 2:319			Withdrawn		6-8-12
Amended	2029	8-31-12	815 KAR 20:100		
803 KAR 2:320			Amended	2099	8-31-12
Amended	2031	(See 39 Ky.R.)	900 KAR 7:030		
803 KAR 2:403			Amended	2102	8-31-12
Amended	2037	8-31-12	900 KAR 9:010	2121	(See 39 Ky.R.)
803 KAR 2:405			921 KAR 2:015		
Amended	2040	(See 39 Ky.R.)	Amended	1501	
803 KAR 2:407			As Amended	1969	6-20-12
Amended	2042	(See 39 Ky.R.)	921 KAR 3:035		
803 KAR 2:425			Amended	1804	6-20-12
Amended	2044	(See 39 Ky.R.)			
803 KAR 2:500					
Amended	2046	8-31-12			
804 KAR 4:370					
Amended	2049	8-31-12			
806 KAR 3:190					
Amended	1910	(See 39 Ky.R.)			
810 KAR 1:018					
Amended	2052	(See 39 Ky.R.)			
810 KAR 1:028					
Amended	2061	(See 39 Ky.R.)			
810 KAR 1:040	2116	8-31-12			

## 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

## VOLUME 39

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

101 KAR 2:210	729	9-14-12
103 KAR 5:220	730	9-4-12
105 KAR 1:400E	4	5-30-12
201 KAR 2:020E	378	7-20-12
201 KAR 2:030E	379	7-20-12
201 KAR 2:050E	381	7-20-12
201 KAR 2:061E	383	7-20-12
201 KAR 2:205E	385	7-20-12
201 KAR 2:350E	386	7-20-12
201 KAR 5:010	388	7-20-12
201 KAR 5:030	390	7-20-12
201 KAR 5:130	392	7-20-12
201 KAR 8:532	394	7-20-12
201 KAR 8:540	398	7-25-12
201 KAR 9:001	401	7-20-12
201 KAR 9:081	402	7-20-12
201 KAR 9:200	406	7-20-12
201 KAR 9:210	408	7-20-12
201 KAR 9:220	409	7-20-12
201 KAR 9:230	410	7-20-12
201 KAR 9:240	411	7-20-12
201 KAR 9:250	414	7-20-12
201 KAR 9:260	418	7-20-12

201 KAR 9:310	423	7-20-12
201 KAR 20:056	426	7-20-12
201 KAR 20:057	429	7-20-12
201 KAR 20:161	431	7-20-12
201 KAR 20:215	434	7-20-12
201 KAR 25:011	436	7-20-12
201 KAR 25:021	438	7-20-12
201 KAR 25:031	439	7-20-12
201 KAR 25:051	441	7-20-12
201 KAR 25:090	444	7-20-12
301 KAR 2:225	773	8-27-12
900 KAR 6:075	736	8-23-12
902 KAR 20:420	446	7-20-12
902 KAR 55:110	452	7-20-12
502 KAR 10:120E	8	5-31-12
906 KAR 1:160E	182	7-13-12
907 KAR 9:005	739	9-4-12
907 KAR 9:010	746	9-4-12
907 KAR 14:005E	184	6-22-12

### ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 3:100		(See 38 Ky.R.)
As Amended	187	8-31-12
16 KAR 2:120		
Amended	66	
As Amended	456	9-10-12
16 KAR 3:010		
Amended	497	
16 KAR 6:030		



**LOCATOR INDEX - EFFECTIVE DATES**

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
Amended	499		Amended	528	
40 KAR 2:330	350		201 KAR 18:192		
Amended	780		Amended	530	
101 KAR 2:210			201 KAR 20:056		
Amended	813		Amended	533	
103 KAR 5:220	916		201 KAR 20:057		
103 KAR 31:170		(See 38 Ky.R.)	Amended	535	
As Amended	458	10-5-12	201 KAR 20:161		
105 KAR 1:400			Amended	538	
Amended	68		201 KAR 20:215		
As Amended	750		Amended	540	
105 KAR 1:420			201 KAR 20:230		
Amended	72		Amended	257	
As Amended	753		201 KAR 20:370		
105 KAR 1:430			Amended	258	
Amended	74		201 KAR 20:411		
As Amended	753		Amended	259	
106 KAR 2:030		(See 38 Ky.R.)	201 KAR 20:450		(See 38 Ky.R.)
As Amended	199	8-21-12	As Amended	203	8-15-12
200 KAR 14:011			201 KAR 22:001		
Amended	814		Amended	76	
200 KAR 14:081			Withdrawn		8-16-12
Amended	817		Amended	826	
200 KAR 14:091			201 KAR 22:040		
Amended	820		Amended	77	9-19-12
201 KAR 2:020			201 KAR 22:045		
Amended	501		Amended	79	
201 KAR 2:030			As Amended	459	9-19-12
Amended	502		201 KAR 22:053		
201 KAR 2:050			Amended	81	
Amended	504		Withdrawn		8-16-12
201 KAR 2:061			Amended	827	
Amended	506		201 KAR 25:011		
201 KAR 2:205			Amended	543	
Amended	508		201 KAR 25:021		
201 KAR 2:340	172		Amended	545	
As Amended	458	9-19-12	201 KAR 25:031		
201 KAR 2:350	655		Amended	546	
201 KAR 5:010			201 KAR 25:051		
Amended	509		Amended	548	
201 KAR 5:030			201 KAR 25:090	676	
Amended	511		201 KAR 30:030		
201 KAR 5:130	656		Amended	83	
201 KAR 8:520			As Amended	460	10-5-12
Amended	512		201 KAR 30:125		
201 KAR 8:532			Amended	86	10-5-12
Amended	514		201 KAR 30:180		
201 KAR 8:540			Amended	87	
Amended	519		As Amended	461	10-5-12
201 KAR 8:562		(See 38 Ky.R.)	201 KAR 30:190		
As Amended	199	8-15-12	Amended	90	
201 KAR 9:001	658		As Amended	463	10-5-12
201 KAR 9:081			201 KAR 32:035		(See 38 Ky.R.)
Amended	521		As Amended	12	8-6-12
201 KAR 9:200	660		201 KAR 44:090	353	
201 KAR 9:210	661		201 KAR 44:100	354	
201 KAR 9:220	661		201 KAR 44:110	356	
201 KAR 9:230	663		201 KAR 44:120	357	
201 KAR 9:240	664		201 KAR 45:010	920	
201 KAR 9:250	667		201 KAR 45:020	921	
201 KAR 9:260	671		201 KAR 45:030	922	
201 KAR 9:310			201 KAR 45:040	923	
Amended	526		201 KAR 45:050	925	
201 KAR 13:040		(See 38 Ky.R.)	202 KAR 7:601		(See 38 Ky.R.)
As Amended	11	8-6-12	AmComments	40	
201 KAR 14:105			As Amended	754	
Amended	821		301 KAR 1:015		
201 KAR 17:090			Amended	830	
Amended	823		301 KAR 1:146		
201 KAR 17:110	918		Amended	832	
201 KAR 18:040			301 KAR 1:155		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
Amended	834		401 KAR 10:030		
301 KAR 1:410		(See 38 Ky.R.)	Amended	584	
As Amended	13	7-12-12	401 KAR 10:031		
301 KAR 2:030			Amended	596	
Amended	551		401 KAR 51:001		
301 KAR 2:041		(See 38 Ky.R.)	Amended	113	
As Amended	205	8-2-12	Amended	783	
301 KAR 2:049		(See 38 Ky.R.)	401 KAR 51:017		
As Amended	15	7-12-12	Amended	124	
301 KAR 2:081		(See 38 Ky.R.)	As Amended	794	
As Amended	18	7-12-12	401 KAR 51:052		
301 KAR 2:082		(See 38 Ky.R.)	Amended	135	
As Amended	23	7-12-12	405 KAR 10:015		(See 38 Ky.R.)
301 KAR 2:084		(See 38 Ky.R.)	As Amended	467	9-6-12
As Amended	27	7-12-12	405 KAR 10:030		(See 38 Ky.R.)
301 KAR 2:225			As Amended	471	9-6-12
Amended	838		405 KAR 16:020		(See 38 Ky.R.)
301 KAR 2:300		(See 38 Ky.R.)	As Amended	473	9-6-12
AmComments	53	8-2-12	418 KAR 1:010		
301 KAR 3:012			Amended	844	
Amended	554		418 KAR 1:020		
301 KAR 3:022		(See 38 Ky.R.)	Amended	846	
AmComments	56	(See 38 Ky.R.)	418 KAR 1:031	926	
As Amended	208	8-2-12	418 KAR 1:040		
301 KAR 4:070			Amended	848	
Amended	***	8-17-12	418 KAR 1:050		
Amended	841		Amended	850	
302 KAR 16:091			418 KAR 1:060		
Amended	94	9-14-12	Amended	852	
302 KAR 27:050			418 KAR 1:070		
Amended	95		Amended	854	
Withdrawn		8-9-12	501 KAR 6:020		(See 38 Ky.R.)
302 KAR 28:020			As Amended	27	8-6-12
Amended	100		501 KAR 6:050		(See 38 Ky.R.)
Withdrawn		8-9-12	As Amended	209	
302 KAR 28:050			501 KAR 6:130		
Amended	102		Amended	144	
Withdrawn		8-9-12	As Amended	476	10-5-12
302 KAR 29:020			501 KAR 6:140		
Amended	104		Amended	146	
Withdrawn		8-9-12	As Amended	477	10-5-12
Amended	556		501 KAR 6:230		
302 KAR 29:050			Amended	270	
Amended	106		As Amended	768	
Withdrawn		8-9-12	501 KAR 6:260		(See 38 Ky.R.)
302 KAR 29:060			As Amended	211	8-31-12
Amended	110		501 KAR 6:270		
Withdrawn		8-9-12	Amended	272	
Amended	558		As Amended	768	
304 KAR 1:040		(See 38 Ky.R.)	501 KAR 6:280		(See 38 Ky.R.)
As Amended	466	10-5-12	As Amended	212	8-31-12
304 KAR 1:080		(See 38 Ky.R.)	501 KAR 11:011(r)	362	
As Amended	467	10-5-12	501 KAR 16:290		
304 KAR 4:070	***		Amended	603	
Withdrawn		8-17-2012	501 KAR 16:310		
306 KAR 1:011(r)	358		Amended	606	
307 KAR 1:005	359		501 KAR 16:330		
As Amended	767		Amended	609	
307 KAR 4:020			502 KAR 10:120		
Amended	262		Amended	148	
307 KAR 8:011(r)	361		As Amended	478	
307 KAR 9:010			601 KAR 9:090		
Amended	264		Amended	274	
401 KAR 5:055			702 KAR 1:160		(See 38 Ky.R.)
Amended	265		As Amended	28	7-13-12
401 KAR 5:060			703 KAR 5:002		(See 38 Ky.R.)
Amended	268		As Amended	30	7-13-12
401 KAR 10:001			703 KAR 5:070		(See 38 Ky.R.)
Amended	561		AmComments	59	
401 KAR 10:026			As Amended	480	
Amended	564		703 KAR 5:140		(See 38 Ky.R.)

**LOCATOR INDEX - EFFECTIVE DATES**

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
As Amended	31	7-13-12	As Amended	488	10-5-12
703 KAR 5:225		(See 38 Ky.R.)	900 KAR 6:030		
AmComments	60		Amended	856	
As Amended	480		900 KAR 6:060		
703 KAR 5:240		(See 38 Ky.R.)	Amended	327	
As Amended	32	7-13-12	Amended	805	
704 KAR 3:305			900 KAR 6:075		
Amended	612		Amended	857	
704 KAR 3:340		(See 38 Ky.R.)	900 KAR 6:085		
As Amended	34	7-13-12	Amended	329	
704 KAR 5:070		(See 38 Ky.R.)	900 KAR 6:090		
As Amended	35	7-13-12	Amended	331	
704 KAR 7:160	678		Amended	807	
803 KAR 2:313		(See 38 Ky.R.)	900 KAR 6:125		
As Amended	212	8-31-12	Amended	860	
803 KAR 2:320		(See 38 Ky.R.)	900 KAR 6:130		
As Amended	212	8-31-12	Amended	811	
803 KAR 2:405		(See 38 Ky.R.)	900 KAR 9:010		(See 38 Ky.R.)
As Amended	217	8-31-12	As Amended	770	
803 KAR 2:407		(See 38 Ky.R.)	902 KAR 20:420		
As Amended	217	8-31-12	902 KAR 55:110		
803 KAR 2:425		(See 38 Ky.R.)	Amended	629	
As Amended	217	8-31-12	906 KAR 1:160		
806 KAR 3:190		(See 38 Ky.R.)	Amended	335	
As Amended	36	8-6-12	As Amended	771	
806 KAR 9:211 (r)	682		907 KAR 1:145		
806 KAR 10:060	683		Amended	632	
806 KAR 17:540			907 KAR 1:155		
Amended	615		Amended	646	
806 KAR 17:545			907 KAR 9:005		
Amended	617		Amended	863	
806 KAR 17:555			907 KAR 9:010		
Amended	620		Amended	869	
807 KAR 5:001			907 KAR 12:010		
Amended	275		907 KAR 12:020		
807 KAR 5:006			907 KAR 14:005		
Amended	295		908 KAR 3:050		
807 KAR 5:011			Amended	873	
Amended	312		910 KAR 1:190		
807 KAR 5:076			Amended	164	
Amended	320		As Amended	490	9-19-12
810 KAR 1:018		(See 38 Ky.R.)	910 KAR 1:240		
As Amended	218	8-30-12	Amended	649	
810 KAR 1:028		(See 38 Ky.R.)	910 KAR 1:260		
As Amended	224	8-31-12	Amended	875	
811 KAR 1:090		(See 38 Ky.R.)	910 KAR 1:240		
As Amended	230	8-30-12	921 KAR 1:001		
811 KAR 1:095		(See 38 Ky.R.)	Amended	337	
As Amended	237	8-31-12	As Amended	772	
811 KAR 2:096		(See 38 Ky.R.)	921 KAR 1:380		
As Amended	243	8-31-12	Amended	339	
811 KAR 2:100		(See 38 Ky.R.)	As Amended	774	
As Amended	251	8-31-12	921 KAR 1:400		
815 KAR 4:030			Amended	342	
Amended	622		921 KAR 1:410		
815 KAR 4:040			Amended	345	
Amended	625		As Amended	776	
815 KAR 4:060			922 KAR 2:090		
Amended	627		Amended	878	
815 KAR 20:020			922 KAR 2:100		
Amended	151		Amended	883	
As Amended	485	10-5-12	922 KAR 2:110		
815 KAR 20:034			Amended	893	
Amended	325		922 KAR 2:120		
815 KAR 20:191			Amended	898	
Amended	155	10-5-12	922 KAR 2:180		
815 KAR 22:010	927		Amended	907	
815 KAR 35:020	363		922 KAR 2:190		
As Amended	769		Amended	912	
815 KAR 35:060					
Amended	162				

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	38 Ky.R. Page No.	Effective Date	Regulation Number	38 Ky.R. Page No.	Effective Date
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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.

# KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
KRS INDEX			418 KAR 1:010
12.355	201 KAR 22:045		418 KAR 1:020
13B	201 KAR 20:161		418 KAR 1:031
	815 KAR 35:060		418 KAR 1:040
	910 KAR 1:240		418 KAR 1:050
	910 KAR 1:260		418 KAR 1:060
	922 KAR 2:090	146.600 - 146.619	418 KAR 1:070
	922 KAR 2:100		401 KAR 10:001
	922 KAR 2:190		401 KAR 10:026
13B.010	921 KAR 1:410		401 KAR 10:030
15.055	921 KAR 1:410	146.990	401 KAR 10:031
15.380	906 KAR 1:160		401 KAR 10:001
16.505 - 16.652	105 KAR 1:430		401 KAR 10:026
17.165	910 KAR 1:240		401 KAR 10:030
	922 KAR 2:090	150.010	401 KAR 10:031
	922 KAR 2:100		301 KAR 1:015
	922 KAR 2:110		301 KAR 1:146
	922 KAR 2:180		301 KAR 1:155
17.500-17.580	922 KAR 2:090		301 KAR 2:300
	922 KAR 2:100		301 KAR 3:012
	922 KAR 2:110	150.025	301 KAR 4:070
	922 KAR 2:180		301 KAR 1:146
18A.030	101 KAR 2:210	150.092	301 KAR 3:022
18A.225	101 KAR 2:210	150.120	301 KAR 2:300
18A.2254	101 KAR 2:210		301 KAR 1:146
39A.350- 39A.366	201 KAR 8:532	150.170	301 KAR 1:155
41.610	200 KAR 14:081		301 KAR 1:146
	200 KAR 14:091		301 KAR 1:155
42.014	200 KAR 14:091		301 KAR 2:030
42.500	200 KAR 14:011		301 KAR 2:300
	200 KAR 14:081	150.175	301 KAR 4:070
	200 KAR 14:091		301 KAR 1:146
42.505-42.545	200 KAR 14:091		301 KAR 1:155
42.520	200 KAR 14:011		301 KAR 2:300
	200 KAR 14:081	150.180	301 KAR 3:022
42.525	200 KAR 14:011		301 KAR 3:022
	200 KAR 14:081	150.183	301 KAR 4:070
48.010	401 KAR 51:001	150.090	301 KAR 3:022
58.200	815 KAR 20:191	150.195	301 KAR 1:015
61.510 - 61.705	105 KAR 1:430	150.240	301 KAR 4:070
61.645	105 KAR:400		301 KAR 3:012
61.701	105 KAR 1:420	150.275	301 KAR 3:022
61.702	105 KAR 1:420	150.280	301 KAR 3:022
61.645	105 KAR 1:420	150.290	301 KAR 3:022
61.805-61.850	418 KAR 1:020	150.330	301 KAR 3:022
61.870-884	418 KAR 1:020	150.340	301 KAR 2:225
	807 KAR 5:001	150.445	301 KAR 2:225
67A.620	921 KAR 1:410		301 KAR 1:146
78.510 - 78.852	105 KAR 1:430	150.450	301 KAR 1:155
95.620	921 KAR 1:410		301 KAR 1:146
95.878	921 KAR 1:410		301 KAR 1:155
98.2	922 KAR 2:090	150.485	301 KAR 3:022
131.570	921 KAR 1:410	150.520	301 KAR 3:022
134.490	103 KAR 5:220	150.525	301 KAR 3:022
141.040	306 KAR 1:011	150.600	301 KAR 3:022
146.200 - 146.360	401 KAR 10:001	150.603	301 KAR 3:022
	401 KAR 10:026		301 KAR 2:225
	401 KAR 10:030	150.620	301 KAR 3:022
	401 KAR 10:031	150.625	301 KAR 3:012
	418 KAR 1:031	150.640	301 KAR 1:015
146.410 - 146.535	401 KAR 10:001		301 KAR 3:012
	401 KAR 10:026	150.660	301 KAR 3:022
	401 KAR 10:030	150.720	301 KAR 3:022
	401 KAR 10:031	150.990	301 KAR 1:015
146.415	418 KAR 1:010		301 KAR 1:146
146.550 - 146.570	401 KAR 10:001		301 KAR 1:155
	401 KAR 10:026		301 KAR 2:030
	401 KAR 10:030		301 KAR 3:012
	401 KAR 10:031		301 KAR 4:070
		151	922 KAR 2:120

KRS SECTION	REGULATION	KRS SECTION	REGULATION
154.12-100	307 KAR 1:005		815 KAR 4:040
154.20-033	307 KAR 1:005	198B.4009	815 KAR 4:030
	307 KAR 8:011		815 KAR 4:040
	307 KAR 9:010		815 KAR 4:060
154.31	307 KAR 1:005	198B.4011	815 KAR 4:030
	307 KAR 4:020		815 KAR 4:060
154.32	307 KAR 8:011	198B.4013	815 KAR 4:040
154.32-010	307 KAR 1:005		815 KAR 4:060
154.34-070	307 KAR 9:010	198B.4023	815 KAR 4:030
154.45-001-154.45-120	306 KAR 1:011		815 KAR 4:040
156.160	704 KAR 3:305		815 KAR 4:060
	704 KAR 7:160	198B.4025	815 KAR 4:030
157	922 KAR 2:090		815 KAR 4:040
157.390	16 KAR 2:120		815 KAR 4:060
158.444	704 KAR 7:160	198B.4027	815 KAR 4:030
158.645	703 KAR 5:225	198B.4033	815 KAR 4:030
	704 KAR 3:305	198B.6401	815 KAR 22:010
158.6451	703 KAR 5:070	198B.6405	815 KAR 22:010
	703 KAR 5:225	198B.6409	815 KAR 22:010
	704 KAR 3:305	198B.6411	815 KAR 22:010
158.6453	703 KAR 5:070	198B.6415	815 KAR 22:010
	703 KAR 5:225	198B.6417	815 KAR 22:010
158.6455	703 KAR 5:070	199.011	910 KAR 1:260
	703 KAR 5:225		922 KAR 2:090
161.020	16 KAR 2:120		922 KAR 2:100
	16 KAR 3:010		922 KAR 2:110
	16 KAR 6:030		922 KAR 2:180
161.027	16 KAR 6:030	199.892	922 KAR 2:090
161.028	16 KAR 2:120	199.894	922 KAR 2:090
	16 KAR 3:010		922 KAR 2:100
161.030	16 KAR 2:120		922 KAR 2:110
	16 KAR 3:010		922 KAR 2:120
	16 KAR 6:030	199.895	922 KAR 2:090
161.100	16 KAR 2:120		922 KAR 2:100
161.700	921 KAR 1:410	199.896	922 KAR 2:090
161.1211	16 KAR 2:120		922 KAR 2:100
161.1221	16 KAR 2:120		922 KAR 2:110
164.772	201 KAR 22:040		922 KAR 2:120
	815 KAR 35:060		922 KAR 2:180
176.430	401 KAR 10:030		922 KAR 2:190
186	922 KAR 2:120	199.897	922 KAR 2:100
186.020	922 KAR 2:100		922 KAR 2:110
186.570	921 KAR 1:410	199.898	922 KAR 2:090
186A.115	601 KAR 9:090		922 KAR 2:100
186A.500-550	601 KAR 9:090		922 KAR 2:110
189.010-210	601 KAR 9:090		922 KAR 2:120
189.125	922 KAR 2:100		922 KAR 2:180
	922 KAR 2:120	199.990	922 KAR 2:190
194A.050	921 KAR 1:001	199.8982	922 KAR 2:100
	922 KAR 2:100		922 KAR 2:180
194A.060	910 KAR 1:190	199.8994	922 KAR 2:180
	910 KAR 1:240	205.201	910 KAR 1:190
194A.700-729	910 KAR 1:240	205.203	910 KAR 1:190
196	501 KAR 6:130	205.455	910 KAR 1:190
	501 KAR 6:140		910 KAR 1:260
	501 KAR 6:230	205.460	910 KAR 1:190
	501 KAR 6:270	205.465	910 KAR 1:190
	501 KAR 6:999	205.520	907 KAR 1:145
196.030	501 KAR 16:290		907 KAR 1:155
	501 KAR 16:310		907 KAR 9:005
	501 KAR 16:330		907 KAR 9:010
196.070	501 KAR 16:290		907 KAR 12:010
	501 KAR 16:310		907 KAR 12:020
	501 KAR 16:330	205.560	907 KAR 14:005
196.180	501 KAR 16:290	205.594	921 KAR 1:410
	501 KAR 16:310	205.595	921 KAR 1:410
	501 KAR 16:330	205.705	921 KAR 1:380
197	501 KAR 6:130	205.710-205.800	921 KAR 1:001
	501 KAR 6:140		921 KAR 1:380
	501 KAR 6:230		921 KAR 1:400
	501 KAR 6:270	205.710-205.802	921 KAR 1:410
	501 KAR 6:999	205.990	921 KAR 1:400
198B.030	815 KAR 4:060	205.992	921 KAR 1:380
198B.4003	815 KAR 4:030	205.5605	907 KAR 1:145

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	907 KAR 12:010	217B.525	302 KAR 29:050
205.5606	907 KAR 1:145	217B.545	302 KAR 29:050
	907 KAR 12:010	218A.010	902 KAR 55:110
205.5607	907 KAR 1:145	218A.172	201 KAR 9:001
	907 KAR 12:010		201 KAR 25:090
209.030	910 KAR 1:240	218A.175	201 KAR 9:250
209A.030	910 KAR 1:190		902 KAR 20:420
210.710	907 KAR 3:050	218A.202	201 KAR 9:230
210.720	907 KAR 3:050		902 KAR 55:110
210.730	907 KAR 3:050	218A.205	201 KAR 2:020
211.350-211.380	922 KAR 2:120		201 KAR 2:050
213.046	921 KAR 1:380		201 KAR 2:061
	921 KAR 1:400		201 KAR 5:010
214.010	922 KAR 2:100		201 KAR 5:030
	922 KAR 2:110		201 KAR 5:130
	922 KAR 2:180		201 KAR 9:081
214.036	922 KAR 2:100		201 KAR 9:200
	922 KAR 2:110		201 KAR 9:210
214.610	201 KAR 9:310		201 KAR 9:220
	201 KAR 22:040		201 KAR 9:240
214.615	201 KAR 8:532		201 KAR 9:260
	201 KAR 9:310		201 KAR 9:310
214.620	201 KAR 9:310		201 KAR 20:056
216.300	910 KAR 1:240		201 KAR 20:057
216.595	910 KAR 1:240		201 KAR 20:161
216.789	910 KAR 1:240		201 KAR 20:215
216.793	910 KAR 1:240		201 KAR 25:011
216B.010	900 KAR 6:060		201 KAR 25:021
	900 KAR 6:075		201 KAR 25:031
	900 KAR 6:085		201 KAR 25:051
	900 KAR 6:090		201 KAR 25:090
	900 KAR 6:130	218A.240	902 KAR 55:110
216B.010 - 216B.131	902 KAR 20:420		906 KAR 1:160
216B.015	900 KAR 6:030	218A.435	501 KAR 11:011
216B.020	900 KAR 6:125	218A.1446	906 KAR 1:160
	900 KAR 6:130	224.01-010	401 KAR 5:055
216B.040	900 KAR 6:125		401 KAR 5:060
	900 KAR 6:130		401 KAR 10:001
216B.061	900 KAR 6:085		401 KAR 10:026
216B.062	900 KAR 6:060		401 KAR 10:030
216B.085	900 KAR 6:090		401 KAR 10:031
216B.086	900 KAR 6:090		401 KAR 51:001
216B.090	900 KAR 6:090	224.01-070	401 KAR 5:055
216B.095	900 KAR 6:075	224.01-400	401 KAR 5:055
	900 KAR 6:090		401 KAR 5:060
	900 KAR 6:125		401 KAR 10:001
216B.130	900 KAR 6:030		401 KAR 10:026
216B.400	201 KAR 20:411		401 KAR 10:030
216B.450	907 KAR 9:005		401 KAR 10:031
	907 KAR 9:010	224.10-100	401 KAR 51:017
216B.455	900 KAR 6:030	224.16-050	401 KAR 10:001
	900 KAR 6:075		401 KAR 10:026
	907 KAR 9:005		401 KAR 10:030
	907 KAR 9:010		401 KAR 10:031
216B.459	907 KAR 9:005	224.16-070	401 KAR 10:001
	907 KAR 9:010		401 KAR 10:026
216B.990	900 KAR 6:030		401 KAR 10:030
	900 KAR 6:060		401 KAR 10:031
	900 KAR 6:075	224.20-100	401 KAR 51:001
	900 KAR 6:085		401 KAR 51:052
	900 KAR 6:090	224.20-110	401 KAR 51:001
	900 KAR 6:130		401 KAR 51:052
	902 KAR 20:420	224.20-120	401 KAR 51:001
216B.0615	900 KAR 6:085		401 KAR 51:052
217	922 KAR 2:120	224.70-100	401 KAR 5:055
217.015	301 KAR 1:155		401 KAR 5:060
217B	302 KAR 27:050	224.70-100 - 224.70-140	401 KAR 10:001
	302 KAR 28:020		401 KAR 10:026
	302 KAR 28:050		401 KAR 10:030
	302 KAR 29:020		401 KAR 10:031
	302 KAR 29:060	224.70-120	401 KAR 5:055
217B.190	302 KAR 29:050		401 KAR 5:060
217B.515	302 KAR 29:050	224.71-100 - 224.71-145	401 KAR 10:001
217B.520	302 KAR 29:050		401 KAR 10:026

KRS SECTION	REGULATION	KRS SECTION	REGULATION
224.73-100 - 224.73-120	401 KAR 10:030		201 KAR 9:210
	401 KAR 10:031		201 KAR 9:220
	401 KAR 10:001		201 KAR 9:230
	401 KAR 10:026		201 KAR 9:240
	401 KAR 10:030		201 KAR 9:250
224.99-010	401 KAR 10:031		201 KAR 9:260
	401 KAR 5:055		
	401 KAR 5:060	311.565	201 KAR 9:310
227.220	922 KAR 2:120	311.601	201 KAR 9:310
227.480	815 KAR 35:020	311.990	201 KAR 9:001
227.487	815 KAR 35:020		201 KAR 9:081
227.491	815 KAR 35:020		201 KAR 9:200
227A.010	815 KAR 35:060		201 KAR 9:210
227A.060	815 KAR 35:060		201 KAR 9:220
227A.100	815 KAR 35:060		201 KAR 9:230
235.010	301 KAR 1:015		201 KAR 9:240
235.990	301 KAR 1:015		201 KAR 9:250
237.110	921 KAR 1:410		201 KAR 9:260
247.232	302 KAR 16:091	311A.110	202 KAR 7:601
278	807 KAR 5:006	311A.115	202 KAR 7:601
278.010	807 KAR 5:011	311A.120	202 KAR 7:601
	807 KAR 5:076	311A.130	202 KAR 7:601
278.020	807 KAR 5:001	313.010	201 KAR 8:532
278.030	807 KAR 5:011	313.022	201 KAR 8:520
	807 KAR 5:076	313.030	201 KAR 8:520
278.160	807 KAR 5:011		201 KAR 8:532
	807 KAR 5:076	313.035	201 KAR 8:532
278.170	807 KAR 5:011	313.060	201 KAR 8:540
278.180	807 KAR 5:011	313.080	201 KAR 8:532
	807 KAR 5:076	313.085	201 KAR 8:540
278.185	807 KAR 5:011	313.100	201 KAR 8:520
	807 KAR 5:076	313.130	201 KAR 8:532
278.190	807 KAR 5:011	313.245	201 KAR 8:532
	807 KAR 5:076	314.01	922 KAR 2:100
278.300	807 KAR 5:001	314.011	201 KAR 20:056
278.310	807 KAR 5:076		201 KAR 20:057
278.380	807 KAR 5:076		201 KAR 20:161
281A.120	502 KAR 10:120		201 KAR 20:215
281A.130	502 KAR 10:120		922 KAR 2:110
281A.150	502 KAR 10:120		922 KAR 2:120
281A.160	502 KAR 10:120		922 KAR 2:180
281A.170	502 KAR 10:120	314.031	201 KAR 20:161
304.1-040	806 KAR 10:060	314.041	201 KAR 20:230
304.1-050	806 KAR 17:555		201 KAR 20:370
304.2-110	806 KAR 10:060	314.042	201 KAR 20:056
304.9-105	806 KAR 9:211		201 KAR 20:057
304.9-260	806 KAR 9:211		201 KAR 20:370
304.9-270	806 KAR 9:211	314.051	201 KAR 20:230
304.9-330	806 KAR 9:211		201 KAR 20:370
304.9-430	806 KAR 9:211	314.071	201 KAR 20:161
304.10-030	806 KAR 10:060		201 KAR 20:230
304.10-040	806 KAR 10:060		201 KAR 20:370
304.10-140	806 KAR 10:060	314.073	201 KAR 20:215
304.14-120	806 KAR 17:555		201 KAR 20:230
304.14-430 - 304.14-450	806 KAR 17:555	314.091	201 KAR 20:056
304.17A-095 - 304.17A-0954	806 KAR 17:555		201 KAR 20:161
304.040 - 304.075	201 KAR 8:532	314.107	201 KAR 20:161
309.331	201 KAR 45:010		201 KAR 20:370
	201 KAR 45:050	314.142	201 KAR 20:411
309.335	201 KAR 45:010	314.161	201 KAR 20:056
	201 KAR 45:020	314.193	201 KAR 20:057
309.337	201 KAR 45:040	314.470	201 KAR 20:056
309.339	201 KAR 45:050		201 KAR 20:161
310.005	910 KAR 1:190	314.991	201 KAR 20:161
310.021	910 KAR 1:190		201 KAR 20:215
310.031	910 KAR 1:190		201 KAR 20:411
310.041	201 KAR 45:030	315.010	201 KAR 2:340
311.420	201 KAR 25:011	315.020	201 KAR 2:205
311.450	201 KAR 25:021		201 KAR 2:340
	201 KAR 25:031	315.035	201 KAR 2:050
311.490	201 KAR 25:051		201 KAR 2:340
311.530 - 311.620	201 KAR 9:001	315.036	201 KAR 2:050
	201 KAR 9:081	315.050	201 KAR 2:050
	201 KAR 9:200	315.060	201 KAR 2:050



KRS SECTION	REGULATION	KRS SECTION	REGULATION
315.050	201 KAR 2:020	367.83807	40 KAR 2:330
315.110	201 KAR 2:050	382.800-382.860	418 KAR 1:040
315.120	201 KAR 2:050	403.160	921 KAR 1:400
315.131	201 KAR 2:061	403.210-403.240	921 KAR 1:001
315.191	201 KAR 2:061		921 KAR 1:400
	201 KAR 2:205	403.211	921 KAR 1:380
	201 KAR 2:340	403.211-403.215	921 KAR 1:410
315.210	201 KAR 2:030	405.060	921 KAR 1:410
315.300	201 KAR 2:205	405.405-405.991	921 KAR 1:410
315.335	201 KAR 2:205	405.430	921 KAR 1:380
315.402	201 KAR 2:050		921 KAR 1:400
315.512	201 KAR 2:350	405.440	921 KAR 1:001
315.514	201 KAR 2:350		921 KAR 1:400
315.518	201 KAR 2:050	405.467	921 KAR 1:380
	201 KAR 2:350	405.520	921 KAR 1:001
315.520	201 KAR 2:050		921 KAR 1:380
	201 KAR 2:350	405.991	921 KAR 1:400
315.0351	201 KAR 2:050	406.021	921 KAR 1:380
	201 KAR 2:205		921 KAR 1:400
317.410	201 KAR 14:105	406.025	921 KAR 1:380
317.440	201 KAR 14:105		921 KAR 1:400
318	922 KAR 2:120	407.5101-407.5902	921 KAR 1:001
318.010	815 KAR 20:020		921 KAR 1:380
318.015	815 KAR 20:020		921 KAR 1:410
318.054	815 KAR 20:034	421.500-421.550	201 KAR 20:411
318.130	815 KAR 20:020	422.317	201 KAR 8:540
	815 KAR 20:034	427.120	921 KAR 1:410
318.150	815 KAR 20:020	427.125	921 KAR 1:410
318.160	815 KAR 20:191	431.213 - 431.270	501 KAR 16:290
318.200	815 KAR 20:020		501 KAR 16:310
319B.010	201 KAR 44:090		501 KAR 16:330
319B.030	201 KAR 44:090	439	501 KAR 6:130
	201 KAR 44:120		501 KAR 6:140
319B.040	201 KAR 44:400		501 KAR 6:230
319B.130	201 KAR 44:110		501 KAR 6:270
320.220	201 KAR 5:010		501 KAR 6:999
320.250	201 KAR 5:010	446.010	418 KAR 1:010
320.270	201 KAR 5:010	447.272	907 KAR 1:155
320.280	201 KAR 5:030		907 KAR 12:020
322.060	201 KAR 18:040	454.220	921 KAR 1:400
322.090	201 KAR 18:040	514	910 KAR 1:260
322.100	201 KAR 18:040	527.070	922 KAR 2:100
322.110	201 KAR 18:040		922 KAR 2:120
322.120	201 KAR 18:040		922 KAR 2:180
322.160	201 KAR 18:040	532.130 - 532.140	501 KAR 16:290
322.170	201 KAR 18:040	600.020	922 KAR 2:090
322.290	201 KAR 18:192		922 KAR 2:100
324A.010	201 KAR 30:030	610.170	921 KAR 1:380
324A.030	201 KAR 30:030	620.020	922 KAR 2:090
324A.035	201 KAR 30:030		922 KAR 2:100
	201 KAR 30:125		922 KAR 2:110
	201 KAR 30:180		922 KAR 2:180
	201 KAR 30:190	620.030	922 KAR 2:100
324A.040	201 KAR 30:030		922 KAR 2:110
	201 KAR 30:190		922 KAR 2:120
324A.045	201 KAR 30:125	16 C.F.R.	922 KAR 2:100
324A.052	201 KAR 30:030		922 KAR 2:120
327.010	201 KAR 22:001	29 C.F.R.	815 KAR 35:060
	201 KAR 22:045	31 C.F.R.	921 KAR 1:410
327.040	201 KAR 22:053	33 C.F.R.	401 KAR 5:055
327.050	201 KAR 22:040	40 C.F.R.	401 KAR 5:055
327.070	201 KAR 22:040		401 KAR 5:060
	201 KAR 22:045		401 KAR 10:001
	201 KAR 22:053		401 KAR 51:001
334A.030	16 KAR 2:120		401 KAR 51:017
334A.033	16 KAR 2:120		401 KAR 51:052
334A.035	16 KAR 2:120	42 C.F.R.	907 KAR 1:145
334A.050	16 KAR 2:120		907 KAR 1:155
334A.060	16 KAR 2:120		907 KAR 12:010
334A.170	201 KAR 17:090		907 KAR 12:020
334A.200	201 KAR 17:110	45 C.F.R.	921 KAR 1:001
339.230	815 KAR 35:060		921 KAR 1:380
367.83801	40 KAR 2:330		921 KAR 1:400
367.83805	40 KAR 2:330		921 KAR 1:410

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	922 KAR 2:090		
	922 KAR 2:100		
	922 KAR 2:110		
	922 KAR 2:120		
	922 KAR 2:180		
49 C.F.R.	502 KAR 10:120		
	807 KAR 5:006		
	922 KAR 2:100		
	922 KAR 2:120		
7 U.S.C.	302 KAR 27:050		
	302 KAR 28:050		
	302 KAR 29:060		
12 U.S.C.	201 KAR 30:125		
	201 KAR 30:190		
15 U.S.C.	921 KAR 1:410		
20 U.S.C.	703 KAR 5:225		
26 U.S.C.	105 KAR 1:430		
	306 KAR 1:011		
30 U.S.C.	401 KAR 10:030		
33 U.S.C.	401 KAR 5:055		
	401 KAR 5:060		
42 U.S.C.	201 KAR 8:540		
	401 KAR 5:055		
	401 KAR 5:060		
	401 KAR 51:001		
	401 KAR 51:017		
	401 KAR 51:052		
	806 KAR 17:555		
	907 KAR 1:145		
	907 KAR 1:155		
	907 KAR 12:010		
	907 KAR 12:020		
	910 KAR 1:190		
	910 KAR 1:260		
	921 KAR 1:001		
	921 KAR 1:380		
	921 KAR 1:400		
	921 KAR 1:410		
	922 KAR 2:090		
	922 KAR 2:100		
	922 KAR 2:120		
	922 KAR 2:180		
49 U.S.C.	502 KAR 10:120		
	807 KAR 5:006		
Pub.L.110-245	105 KAR 1:430		
2010 ES Ky. Acts Ch. 1	806 KAR 17:545		
2011 Ky. Acts Ch. 82	807 KAR 5:100		
	807 KAR 5:110		
2012 Ky. Acts Ch. 1	201 KAR 8:520		
	201 KAR 8:532		
	201 KAR 8:540		
2012 Ky Acts Ch. 144	806 KAR 17:540		
	806 KAR 17:545		
	806 KAR 17:555		

## TECHNICAL AMENDMENT INDEX

Regulation Number	Effective Date	Regulation Number	Effective Date
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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2012 *Kentucky Administrative Regulations Service*. 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 of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

201 KAR 20:310	7/23/2012
201 KAR 44:020	8/28/2012
803 KAR 2:180	7/12/2012
803 KAR 2:304	7/12/2012
803 KAR 2:305	7/12/2012
803 KAR 2:311	7/12/2012
803 KAR 2:315	7/12/2012
803 KAR 2:319	7/12/2012
803 KAR 2:408	7/12/2012
803 KAR 2:600	7/12/2012
908 KAR 3:050	8/9/2012
911 KAR 1:070	8/2/2012
921 KAR 2:270	7/5/2012
922 KAR 1:430	7/5/2012

## SUBJECT INDEX

### AGRICULTURE, DEPARTMENT OF

Agriculture Pest Control  
Certification; 302 KAR 27:050  
Amusement Rides  
Rides and attractions not included in the definition of amusement ride or attraction; 302 KAR 16:091  
Ornamental Turf Lawn and Interior Plantscape Pest Control  
Certification; 302 KAR 28:050  
General provisions; 302 KAR 28:020  
Structural Pest Control  
Certification; 302 KAR 29:060  
Commercial structural pest control and fumigation; 302 KAR 29:050  
General provisions; 302 KAR 29:020

### AIR QUALITY, DIVISION OF

Attainment and Maintenance of the National Ambient Air Quality Standards  
Definitions for 401 KAR Chapter 51; 401 KAR 51:001  
Prevention of significant deterioration of air quality; 401 KAR 51:017  
Review of new sources in or impacting upon nonattainment areas; 401 KAR 51:052

### BUILDING CODE ENFORCEMENT, DIVISION OF

Elevator Safety  
Elevator contractor licensing requirements; 815 KAR 4:030  
Elevator mechanic licensing requirements; 815 KAR 4:040  
Requirements for approval of continuing education courses and providers; 815 KAR 4:060

### ECONOMIC DEVELOPMENT, CABINET FOR

Economic Development Finance Authority  
Applications for Kentucky Incentive Program; 307 KAR 1:005  
Kentucky Enterprise Initiative Act; 307 KAR 4:020  
Repeal of 306 KAR 1:010, 1:020, 1:030, 1:040, 1:050, 1:060, 1:070 and 1:090; 306 KAR 1:011  
Kentucky Business Investment Program  
Repeal of 307 KAR 8:010; 307 KAR 8:011  
Kentucky Reinvestment Act  
Application for Kentucky Reinvestment Act Program; 307 KAR 9:010

### EDUCATION, DEPARTMENT OF

Assessment and Accountability  
Accountability Definitions and Procedures; 703 KAR 5:240  
Procedures for the inclusion of special populations in the state-required assessment and accountability programs; 703 KAR 5:070  
Repeal of 703 KAR 5:001, 020, 040, 050, 060, 130 and 160; 703 KAR 5:002  
School and district accountability, recognition, support, and consequences; 703 KAR 5:225  
General Administration  
School health services; 702 KAR 1:160  
Kindergartens and Nursery Schools  
Common Kindergarten entry screener; 704 KAR 5:070  
Office of Instruction  
Commonwealth Diploma Program; 704 KAR 3:340  
Minimum requirements for high school graduation; 704 KAR 3:305  
Use of Restraint and Seclusion in Public Schools; 704 KAR 7:160

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Education, Department of; Titles 702-704 KAR (*See Education, Department of*)

### EDUCATION PROFESSIONAL STANDARDS BOARD

Administrative Certificates  
Certification for school superintendent; 16 KAR 3:010  
Advanced Certification and Rank  
Examination prerequisites for principal certification; 16 KAR 6:030

Teaching Certificates  
Emergency certification and out-of-field teaching; 16 KAR 2:120

### ENERGY AND ENVIRONMENT CABINET

Environmental Protection, Department of  
Air Quality, Division of (*See Air Quality, Division of; 401 KAR Chapter 51*)  
Public Service Commission  
Utilities  
Alternative rate adjustment procedure for small utilities; 807 KAR 5:076  
General Rules; 807 KAR 5:006  
Rules of procedure; 807 KAR 5:001  
Tariffs; 807 KAR 5:011  
Water, Division of (*See Water Quality, Division of, 401 KAR Chapter 5*)

### ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Air Quality, Division of (*See Air Quality, Division of; 401 KAR Chapter 51*)  
Antidegradation policy implementation methodology; 401 KAR 10:030  
Definitions for 401 KAR Chapter 10; 401 KAR 10:001  
Designation of uses of surface waters; 401 KAR 10:026  
Surface water standards; 401 KAR 10:031

### FINANCE AND ADMINISTRATION CABINET

Kentucky Retirement Systems (*See Kentucky Retirement Systems, KAR Title 105*)

### FISH AND WILDLIFE RESOURCES, DEPARTMENT OF

Fish  
Boat and motor restrictions; 301 KAR 1:015  
Commercial fishing gear; 301 KAR 1:146  
Commercial fishing requirements; 301 KAR 1:155  
Taking of fish by nontraditional fishing methods; 301 KAR 1:410  
Game  
Black bear; 301 KAR 2:300  
Commercial guide license; 301 KAR 2:030  
Dove, wood duck, teal, and other migratory game bird hunting; 301 KAR 2:225  
Importation of game birds; 301 KAR 2:084  
Shooting areas, dog training areas, commercial foxhound training enclosures; and bobwhite shoot-to-train; 301 KAR 2:041  
Small game and furbearer hunting and trapping on public areas; 301 KAR 2:049  
Transportation and holding of live exotic wildlife; 301 KAR 2:082  
Transportation and holding of live native wildlife; 301 KAR 2:081  
Hunting and Fishing  
License, tag, and permit fees; 301 KAR 3:022  
Public use of Otter Creek Outdoor recreation area; 301 KAR 3:012  
Wildlife  
Scientific and educational collecting permits; 301 KAR 4:070

### GENERAL GOVERNMENT CABINET

Agriculture, Department of (*See Agriculture, Department of; KAR Title 302 KAR*)  
Barbering; Board of  
Barbering school enrollment and postgraduate requirements; 201 KAR 14:105  
Dentistry; Board of  
Dental practices and prescription writing; 201 KAR 8:540  
Fees and Fines; 201 KAR 8:520  
Licensure of dental hygienists; 201 KAR 8:562  
Licensure of dentists; 201 KAR 8:532  
Kentucky Real Estate Appraisers Board (*See Kentucky Real Estate Appraisers Board, 201 KAR Chapter 30*)  
Licensed Diabetes Educators; Board of  
Code of ethics; 201 KAR 45:050  
Continuing education; 201 KAR 45:040  
Fees; 201 KAR 45:010  
Renewal, reinstatement and inactive status; 201 KAR 45:030

## SUBJECT INDEX

- Supervision and work experience; 201 KAR 45:020
- Marriage and Family Therapists, Board of
  - Supervision of marriage and family therapist associates; 201 KAR 32:035
- Medical Licensure; Board of
  - Continuing medical education; 201 KAR 9:310
  - Criminal background checks required for all new applicants; 201 KAR 9:210
  - Definitions for terms used in KRS 218A.172; 201 KAR 9:001
  - Disciplinary proceedings; 201 KAR 9:081
  - Emergency orders and hearings; appeals and other proceedings; 201 KAR 9:240
  - Investigation and disposition of complaints; 201 KAR 20:161
  - National practitioner data bank reports; 201 KAR 9:200
  - Professional standards for prescribing and dispensing controlled substances; 201 KAR 9:260
  - Registration and oversight of pain management facilities; 201 KAR 9:250
  - Restriction upon dispensing of Schedule II Controlled Substances and Schedule III Controlled Substances Containing Hydrocodone; 201 KAR 9:220
  - Required registration in the KASPER System; Legal Requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement; 201 KAR 9:230
- Military Affairs; Department of
- Nursing, Board of
  - Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization; 201 KAR 20:056
  - Applications for licensure; 201 KAR 20:370
  - Alternative program; 201 KAR 20:450
  - Continuing competency requirements; 201 KAR 20:215
  - Investigation and disposition; 201 KAR 20:161
  - Renewal; 201 KAR 20:230
  - Scope and standards of practice of advanced practice registered nurses; 201 KAR 20:057
  - Sexual assault nurse examiner program standards and credential requirements; 201 KAR 20:411
  - Voluntary relinquishment of a license or credential; 201 KAR 20:510
- Ophthalmic Dispensers; Board of
  - Licensing; application; examination; experience; renewal; and inactive status; 201 KAR 13:040
- Optometric Examiners; Board of
  - Annual courses of study required; 201 KAR 5:030
  - Application for licensure; endorsement; 201 KAR 5:010
  - Controlled substances; 201 KAR 5:130
- Pharmacy, Board of
  - Examination; 201 KAR 2:020
  - Home medical equipment service providers; 201 KAR 2:350
  - Licenses and permits; fees; 201 KAR 2:050
  - License transfer; 201 KAR 2:030
  - Pharmacist-in-charge; 201 KAR 2:205
  - Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing complaints; 201 KAR 2:061
  - Special pharmacy permit for clinical practice; 201 KAR 2:340
- Physical Therapy, Board of (*See Physical Therapy, Board of; 201 KAR Chapter 22*)
- Podiatry; Board of
  - Annual renewal of licenses, fees; 201 KAR 25:021
  - Approved schools; examination application; fees; 201 KAR 25:011
  - Continuing education; 201 KAR 25:031
  - Prescribing and dispensing controlled substances; 201 KAR 25:090
- Professional engineers and land surveyors, Board of Licensure for
  - Continuing professional development for professional land surveyors; 201 KAR 18:192
  - Fees; 201 KAR 18:040
- Prosthetics, Orthotics, and Pedorthics; Board of
  - Inactive status; 201 KAR 44:100
  - Licensure by endorsement; 201 KAR 44:110
  - Post residency registration; 201 KAR 44:120
- Procedure for complaints and hearings involving licenses: temporary suspension; 201 KAR 25:051
- Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013; 201 KAR 44:090
- Speech-Language pathology and audiology; Board of
  - Continuing education requirements; 201 KAR 17:090
  - Telehealth and telepractice; 201 KAR 17:110
- State Investment Commission
  - Guidelines for money market instruments; 200 KAR 14:091
  - Qualified investments; 200 KAR 14:011
  - Repurchase agreement; 200 KAR 14:081
  - Military Assistance Trust Funds
  - National Guard adoption benefit program; 106 KAR 2:030
- HEALTH AND FAMILY SERVICES, CABINET FOR**
- Aging and Independent Living, Department for
  - Aging Services
    - Nutrition program for older persons; 910 KAR 1:190
- Audits and Investigations; Division of
  - Monitoring system for prescription controlled substances; 902 KAR 55:110
- Certificate of Need
  - Certificate of Need annual surveys, and registration requirements for new Magnetic Resonance Imaging units; 900 KAR 6:125
  - Certificate of Need criteria for physician exemption; 900 KAR 6:130
  - Certificate of Need expenditure minimums; 900 KAR 6:030
  - Certificate of Need filing, hearing, and show cause hearing; 900 KAR 6:090
  - Certificate of Need nonsubstantive review; 900 KAR 6:075
  - Implementation of outstanding Certificates of Need if ownership has changed; 900 KAR 6:085
  - Timetable for submission of Certificate of Need applications; 900 KAR 6:060
- Child care; Division of
  - Certification of family child-care homes; 922 KAR 2:100
  - Child-care center health and safety standards; 922 KAR 2:120
  - Child-care center licensure; 922 KAR 2:090
  - Child-care center provider requirements; 922 KAR 2:110
  - Civil penalties; 922 KAR 2:190
  - Requirements for registered child care providers in the Child Care Assistance program; 922 KAR 2:180
- Community Alternatives; Division of
  - Certification of assisted-living communities; 910 KAR 1:240
  - Kentucky Family Caregiver program; 910 KAR 1:260
  - New supports for community living waiver service and coverage policies; 907 KAR 12:010
- Data Reporting and Public Use Data Sets
  - Data reporting by health care providers; 900 KAR 7:030
- Health Care; Division of
  - Pain management facilities; 902 KAR 20:420
- Income Support; Department for
  - Child support collection and enforcement; 921 KAR 1:410
  - Child support enforcement program application and inter governmental process; 921 KAR 1:380
  - Definitions; 921 KAR 1:001
  - Establishment, review, and modification of child support and medical support orders; 921 KAR 1:400
- Inspector General; Office of
  - Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine; 906 KAR 1:160
- Kentucky Health Information
  - Kentucky health information exchange participation; 900 KAR 9:010
- Medicaid Services; Department for 907 KAR Chapter 1 (*See Medicaid Services; Department of*)
  - Health care-acquired conditions and other provider preventable conditions; 907 KAR 14:005
- Mental Health and Mental Retardation Services
  - Per diem rates; 908 KAR 3:050

## SUBJECT INDEX

### HOUSING, BUILDINGS AND CONSTRUCTION, DEPARTMENT OF

Building Code Enforcement, Division of; 815 KAR Chapters 4-8  
(*See Building Code Enforcement, Division of*)

#### Electrical

Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060; 815 KAR 35:060

#### Fire Protection Sprinkler Contractors and Inspectors

Requirements for approval of continuing education courses and providers; 815 KAR 22:010

#### Plumbing

Joints and connections; 815 KAR 20:100

Minimum fixture requirements; 815 KAR 20:191

Parts or materials list; 815 KAR 20:020

Requirements for approval of continuing education courses and providers; 815 KAR 20:034

### INSURANCE, DEPARTMENT OF

Agents, Consultants, Solicitors and Adjusters

806 KAR 9:211. Repeal of 806 KAR 9:210

Authorization of Insurers and General Requirements

Risk-based capital for insurers; 806 KAR 3:190

#### Health Insurance Contracts

ICARE Program employer eligibility, application process, and requirements; 806 KAR 17:545

ICARE Program high-cost conditions; 806 KAR 17:540

ICARE Program requirements; 806 KAR 17:555

#### Surplus Lines

Cancellation of financial responsibility; 806 KAR 10:060

### JUSTICE AND PUBLIC SAFETY CABINET

Kentucky State Police; Department of; 502 KAR Chapter 11 (*See Kentucky State Police; Department of*)

#### Asset Forfeiture

Repeal 501 KAR 11:010; 501 KAR 11:011

#### Capital Punishment

Lethal injection protocols; 501 KAR 16:330

Pre-execution medical actions; 501 KAR 16:310

Preliminary and post-execution procedures concerning condemned person; 501 KAR 16:290

#### Office of the Secretary

Bell County Forestry Camp; 501 KAR 6:140

Corrections policies and procedures; 501 KAR 6:020

Corrections secured policies and procedures; 501 KAR 6:999

Little Sandy Correctional Complex; 501 KAR 6:230

Luther Luckett Correctional Complex; 501 KAR 6:050

Probation and parole policies and procedures; 501 KAR 6:280

Probation and parole policies and procedures; 501 KAR 6:270

Procedures for recommendation of early termination of probation and review of compliance of supervised individuals; 501 KAR 6:260

Roederer Correctional Complex; 501 KAR 6:110

Western Kentucky Correctional Complex; 501 KAR 6:130

### KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Board of Emergency Medical Services

Training, education, and continuing education; 202 KAR 7:601

### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Division of Student and Administrative Services

Kentucky Loan Program; 11 KAR 3:100

### KENTUCKY HORSE RACING COMMISSION

#### Harness

Disciplinary measures and penalties; 811 KAR 1:095

Drug, medication, and substance classification schedule and withdrawal guidelines; 811 KAR 1:093

Medication; testing procedures; prohibited practices; 811 KAR 1:090

#### Quarter Horse, Appaloosa, and Arabian Racing

Disciplinary measures and penalties; 811 KAR 2:100

Drug, medication, and substance classification schedule and withdrawal guidelines; 811 KAR 2:093

Medication; testing procedures; prohibited practices; 811 KAR 2:096

#### Thoroughbred Racing

Disciplinary measures and penalties; 810 KAR 1:028

Drug, medication, and substance classification schedule and withdrawal guidelines; 810 KAR 1:040

Medication; testing procedures; prohibited practices; 810 KAR 1:018

### KENTUCKY REAL ESTATE APPRAISERS BOARD

Continuing education for appraisers; 201 KAR 30:125

Distance education standards; 201 KAR 30:180

Educational requirements for certification; 201 KAR 30:190

Types of appraisers required in federally-related transactions; certification and licensure; 201 KAR 30:030

### KENTUCKY RETIREMENT SYSTEMS

#### General Rules

401(h) account established under 26 USC 401(h); 105 KAR 1:420

Federal taxation limitation year; 105 KAR 1:400

General compliance with federal tax laws; 105 KAR 1:430

### KENTUCKY STATE POLICE; DEPARTMENT OF

#### Driver Training

Hazardous materials endorsement requirements; 502 KAR 10:120

### LABOR CABINET

Workplace Standards, Department of; 803 Chapter 2 (*See Workplace Standards, Department of*)

### MEDICAID SERVICES; DEPARTMENT FOR

Payments for supports for community living services for an individual with an intellectual or developmental disability; 907 KAR 1:155

Reimbursement for New Supports for Community Living

Psychiatric Residential Treatment Facility Services and Reimbursement

Level I and II psychiatric residential treatment facility service and coverage policies; 907 KAR 9:005

Reimbursement for Level I and II psychiatric residential treatment facility services; 907 KAR 9:010

Waiver services; 907 KAR 12:020

Quality Living; Division of

Kentucky Family Caregiver Program

Supports for community living services for an individual with an intellectual or developmental disability; 907 KAR 1:145

### NATURAL RESOURCES; DEPARTMENT FOR

#### Bond and Insurance Requirements

General bonding provisions; 405 KAR 10:015

General requirements for liability insurance; 405 KAR 10:030

Repeal of 405 KAR 10:010 and 10:020; 405 KAR 10:011E

#### Performance Standards for Surface Mining Activities

Contemporaneous reclamation; 405 KAR 16:020

#### Technical and Administrative Support; Division of

Administrative procedures of the board; 418 KAR 1:020

Definitions for 418 KAR Chapter 1; 418 KAR 1:010

Grant applications; 418 KAR 1:040

Repeal of 418 KAR 1:030; 418 KAR 1:031

Management; 418 KAR 1:060

Procedures for acquisition of land; 418 KAR 1:050

Remedies; 418 KAR 1:070

### OFFICE OF THE INSPECTOR GENERAL

#### Division of Consumer Protection

Mold remediation; 40 KAR 2:330

### PHYSICAL THERAPY, BOARD OF

Code of ethical standards and standards of practice for physical therapists and physical therapist assistants; 201 KAR 22:053

Continued competency requirements and procedures; 201 KAR 22:045

Definitions for 201 KAR Chapter 22; 201 KAR 22:001

## SUBJECT INDEX

Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant; 201 KAR 22:040

### PERSONNEL CABINET

Office of the Secretary

Plan Year handbook for the Public Employee Health Insurance Program; 101 KAR 2:210

### PUBLIC PROTECTION CABINET

Alcoholic Beverage Control, Division of

Entertainment destination center license; 804 KAR 4:370

Housing, Buildings, and Construction, Department of 815 KAR

Chapter 25 (*Housing, Buildings, and Construction, Department of*)

Insurance, Department of; Title 806 Chapters 2, 14-17 (*See Insurance, Department of*)

Kentucky Horse Racing Commission; KAR Titles 810 and 811 (*See Kentucky Horse Racing Commission*)

### REVENUE, DEPARTMENT OF

Ad Valorem Tax; Administration

Installment payment plan guidelines for third party purchasers of certificates of delinquency; 103 KAR 5:220

Sales and Use Tax; Administration and Accounting

Disaster area relief sales and use tax refunds; 103 KAR 31:170

### TRANSPORTATION CABINET

Motor Carriers; Division of

Overweight or over dimensional farm equipment; 601 KAR 1:019

Special overweight or overdimensional motor vehicle load permits; 601 KAR 1:018

Motor Vehicle Tax

Procedures for inspecting vehicles; 601 KAR 9:090

### TOURISM, ARTS AND HERITAGE CABINET

Fish and Wildlife Resources, Title 301 Chapters 1-4 (*See Fish and Wildlife Resources*)

Parks; Department of

Campgrounds; 304 KAR 1:040

Kentucky Proud Promotion Program; 304 KAR 1:080

### WATER, DIVISION OF

Designation of uses of surface water, "

KPDES application requirements; 401 KAR 5:060

Scope and applicability of the KPDES Program; 401 KAR 5:055

### WORKPLACE STANDARDS, DEPARTMENT OF

Occupational Safety and Health

Adoption of 29 C.F.R. Part 1926.250-252; 803 KAR 2:407

Commercial diving operations; 803 KAR 2:319

Fire protection and prevention; 803 KAR 2:405

General; 803 KAR 2:300

General environmental controls; 803 KAR 2:309

Hazardous materials; 803 KAR 2:307

Maritime employment; 803 KAR 2:500

Materials handling and storage; 803 KAR 2:313

Occupational health and environmental controls; 803 KAR 2:403

Special industries; 803 KAR 2:317

Toxic and hazardous substances; 803 KAR 2:320 and 2:425

Welding, cutting, and brazing; 803 KAR 2:316