ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 39, NUMBER 6
SATURDAY, DECEMBER 1, 2012

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, November 15, 2012.

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet December 17, 2012 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1095-1097** of this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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103 KAR 3:060E. Kentucky Tax Amnesty Application. ("E" expires 3/26/2013)

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201 KAR 2:030 & E. License transfer. (“E” expires 1/16/2013) (Deferred from October)

201 KAR 2:040. Registration of pharmacist interns.

201 KAR 2:050 & E. Licenses and permits; fees. (“E” expires 1/16/2013) (Deferred from October)

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) (Deferred from October)

201 KAR 2:205 & E. Pharmacist-in-charge. (“E” expires 1/16/2013) (Deferred from October)

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201 KAR 5:030 & E. Annual courses of study required. (“E” expires 1/16/2013) (Deferred from October)

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201 KAR 8:540 & E. Dental practices and prescription writing. (“E” expires 1/21/2013)(Not Amended After Comments) (Deferred from November)

Board of Medical Licensure

Board

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201 KAR 9:200 & E. National Practitioner Data Bank reports. (“E” expires 1/16/2013) (Deferred from October)

201 KAR 9:210 & E. Criminal background checks required for all new applicants. (“E” expires 1/16/2013) (Deferred from October)

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201 KAR 9:250 & E. Registration and oversight of pain management facilities. (“E” expires 2/16/2013) (Amended After Comments)

201 KAR 9:260 & E. Professional standards for prescribing and dispensing controlled substances. (“E” expires 2/16/2013) (Amended After Comments)

201 KAR 9:310 & E. Continuing medical education. (“E” expires 1/16/2013) (Deferred from October)

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Board

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418 KAR 1:040. Grant applications. (Amended After Comments)
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Department of Education

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Kentucky Assistive Technology Loan Corporation

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Health Services and Facilities
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Division of Audits and Investigations

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Medicaid Services

907 KAR 1:145. Supports for community living services for an individual with an intellectual or developmental disability. (Amended After Comments)

907 KAR 1:155. Payments for supports for community living services for an individual with an intellectual or developmental disability. (Amended After Comments)

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Supports for Community Living Waiver

907 KAR 12:010. New supports for community living waiver service and coverage policies. (Amended After Comments)

907 KAR 12:020. Reimbursement for new supports for community living waiver services. (Amended After Comments)

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Division of Administration and Financial Management

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

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Division of Child Care

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922 KAR 2:090. Child-care center licensure. (Deferred from November)
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922 KAR 2:110. Child-care center provider requirements. (Deferred from November)
922 KAR 2:190. Civil penalties. (Deferred from November)

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Office of Property Valuation

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Board

201 KAR 17:090. Continuing education requirements. (Comments Received; SOC ext.)
201 KAR 17:110. Telehealth and telepractice. (Comments Received; SOC ext.)

Board of Licensed Diabetes Educators

Board

201 KAR 45:010. Fees. (Comments Received; SOC ext.)
201 KAR 45:020. Supervision and work experience. (Comments Received; SOC ext.)
201 KAR 45:030. Renewal, reinstatement, and inactive status. (Comments Received; SOC ext.)
201 KAR 45:040. Continuing education. (Comments Received; SOC ext.)
201 KAR 45:050. Code of ethics. (Comments Received; SOC ext.)

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Department of Housing, Buildings and Construction
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Standards of Safety

815 KAR 10:060. Kentucky standards of safety. (Comments Received)

CABINET FOR HEALTH AND FAMILY SERVICES
Commissioner's Office

Payment and Services

907 KAR 3:170. Telehealth consultation coverage and reimbursement. (Comments Received; SOC ext.)

Office of Health Policy

Certificate of Need

900 KAR 6:075 & E. Certificate of Need nonsubstantive review. ("E" expires 3/20/2013) (Comments Received; SOC ext.)

Division of Healthcare Facilities Management

Psychiatric Residential Treatment Facility Services and Reimbursement

907 KAR 9:005 & E. Level I and II psychiatric residential treatment facility service and coverage policies. ("E" expires 4/3/2013) (Comments Received; SOC ext.)

907 KAR 9:010 & E. Reimbursement for Level I and II psychiatric residential treatment facility services. ("E" expires 4/3/2013) (Comments Received; SOC ext.)

Department for Community Based Services
Division of Child Care

Day Care

922 KAR 2:120. Child-care center health and safety standards. (Comments Received; SOC ext.)
922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program. (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
301 KAR 2:221E

This emergency administrative regulation establishes season dates, limits, shooting hours, and other requirements for hunting waterfowl. Waterfowl hunting season frameworks are set 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 waterfowl season. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler by October 31, 2012.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
STEVEN L. BESHEAR, Governor

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

301 KAR 2:221E. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990
STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21
EFFECTIVE: October 31, 2012 at noon
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 of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, white-fronted goose, or brant.
(2) "Light Goose" means a snow goose or Ross's goose.
(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60
(4) "Waterfowl" is defined in KRS 150.010(40).

Section 2. (1) Except as authorized by 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.
(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Season dates. (1) Duck, coot, and merganser:
(a) Beginning on Thanksgiving Day for four (4) consecutive days; and
(b) For fifty-six (56) consecutive days ending on the last Sunday in January of the following year.
(2) Canada goose:
(a) Eastern, Pennyrile, and Western Goose Zones, beginning on Thanksgiving Day and continuing until the last day in January[~~November 23 for seventy (70) consecutive days~~].
(b) Northeast Goose Zone:[~~;~~]
1. Beginning on January 1 for thirty-one (31) consecutive days.
(3) White-fronted and brant geese, beginning on Thanksgiving Day and continuing until the last day in January[~~November 23 for seventy (70) consecutive days~~].
(4) Light goose:
(a) Beginning on Thanksgiving Day and continuing until the last day in January;[~~November 23 for seventy (70) consecutive days and~~] and
(b) Light Goose Conservation Order season:
1. Western Duck Zone: from February 1 through March 31, except:
a. The season shall be closed during the first full weekend in February; and
b. Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226.
2. Eastern Duck Zone from February 1 through March 31.
(5) A person shall not hunt a light or dark goose in:
(a) The areas of Laurel River Lake as posted by sign; or
(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. In the Ballard Zone[~~Reporting Area~~] that is established in 301 KAR 2:224:
(1) A person hunting waterfowl shall:
(a) Hunt from a blind unless hunting in flooded, standing timber;
(b) Not hunt from or establish a blind:
1. Within 100 yards of another blind; or
2. Within fifty (50) yards of a property line; and
(c) Not possess more than one (1) shotgun while in a blind.
(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in 301 KAR 2:221, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks: The daily limit shall be six (6), that shall not include more than:
(a) Four (4) mallards;
(b) Two (2) hen mallards;
(c) Three (3) wood ducks;
(d) One (1) black duck;
(e) Two (2) redheads;
(f) Two (2) pintails;
(g) Four (4)[~~Two (2)~~] scaup;
(h) One (1) mottled duck; or
(i) One (1) canvasback.
(2) Coot: Daily limit fifteen (15).
(3) Merganser: Daily limit five (5), which shall not include more than two (2) hooded mergansers.
(4) Dark goose: Daily limit five (5)[~~six (6)~~], that shall not include more than:
(a) Two (2) Canada geese;
(b) Two (2) white-fronted geese; or
(c) One (1) brant[~~Two (2) brants~~].
(5) Light goose: Daily limit twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.
(6) The possession limit shall be double the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:
(1) 2 p.m. if hunting geese in the Northeast Goose Zone during a Canada goose season;
(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222; or
(3) One-half (1/2) hour after sunset if hunting light geese during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) Season dates:
(a) Light goose: November 5 through January 31;
(b) Light Goose Conservation Order season:
1. Western Duck Zone: from February 1 through March 31, except:
a. The season shall be closed during the first full weekend in February; and

b. Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226.

2. Remainder of state: from February 1 through March 31; and

(c) Other waterfowl: November 5 through January 31.

(2) Daily limit: three (3) waterfowl, except that there shall not be a limit on light goose during the Light Goose Conservation Order season.

(3) Possession limit: six (6) waterfowl, except that there shall not be a possession limit on light goose during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order season. (1) A person hunting light goose during the Light Goose Conservation Order season shall first obtain a free permit by completing the online application process on the department's Web site[~~website~~] at fw.ky.gov.

(2) A person hunting light goose during the Light Goose Conservation Order season shall submit a Light Goose Conservation Order report to the department by April 10.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: October 15, 2012

FILED WITH LRC: October 31, 2012 at noon

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2012–13 waterfowl hunting seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates and bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation manages waterfowl populations and hunting opportunity 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 the existing administrative regulation: This amendment will change the opening date of Canada, white-fronted, snow and brant goose season to be concurrent with the opening date of the first split of the regular duck season statewide except for the Northeast Goose Zone. In addition it will adjust waterfowl daily bag and possession limits to be consistent with that permitted under the federal waterfowl season frameworks under the current season structure.

(b) The necessity of the amendment to this administrative regulation: Waterfowl seasons and limits are set on an annual basis following the establishment of federal frameworks by the U.S. Fish and Wildlife Service each summer. It is the Department's responsibility to allow quality hunting opportunity within these federal frameworks.

(c) How does the amendment conform 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 that will be affected: 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 current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting seasons.

(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 an increased opportunity to hunt waterfowl in the state.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

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

(6) What is the source of 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 funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl 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's Wildlife Division and Law Enforcement Division.

(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 of taking 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 waterfowl within reasonable limits 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? This amendment will not generate revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? No new costs will be incurred in the administration of this program for the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, 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 within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the 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? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The season on snow geese is shorter than the federal framework because migration patterns for this species result in a paucity of birds early in the federal framework. The Canada goose season in the Northeast Goose Zone is shorter than is permitted in the rest of the state because of the desire to maintain a huntable population in that region of the state.

STATEMENT OF EMERGENCY
301 KAR 2:222E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for hunting waterfowl on public lands. Waterfowl hunting season frameworks are set 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 waterfowl season. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler by October 31, 2012.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
STEVEN L. BESHEAR, Governor

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

301 KAR 2:222E. Waterfowl hunting requirements on public lands.

RELATES TO: KRS 150.010(40), 150.305(1), 150.330, 150.340(1), (3), 150.990

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

EFFECTIVE: October 31, 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 of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Blind" means a:

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

(2) "Department blind" means a permanently fixed blind structure built by the department.

(3) "Hunt site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) "Party" means:

(a) A person hunting alone; or

(b) Two (2) to four (4) people who share a department blind or hunt site.

(6) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(7) "Regular waterfowl season" means the open waterfowl season that does not include the Light Goose Conservation Order or the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

(8) "Waterfowl" is defined in KRS 150.010(40).

(9) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. 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 for waterfowl hunting; or

(c) Shot larger than size "T".

Section 3. (1) Except as specified in this section or in Section 4 of this administrative regulation, on a Wildlife Management Area:

(a) A person hunting waterfowl shall not:[;]

1. Establish or hunt from a permanent waterfowl blind;

2. Hunt within 200 yards of:

a. Another occupied hunt site;

b. Another legal waterfowl hunting party; or

c. An area closed to waterfowl hunting;

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and

(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

(2) A person wanting to establish or use a permanent waterfowl blind or hunt site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas:

(a) Shall first obtain a waterfowl blind permit from the U.S.

Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner; and

(c) Shall not hold more than one (1) permit per area.

(3) A person who participates in a drawing for a hunt site permit shall:

(a) Be at least eighteen (18) years of age; and

(b) Possess:

1. A valid Kentucky hunting license;

2. A Kentucky waterfowl permit; and

3. A federal duck stamp.

(4) The holder of a hunt site permit shall:

(a) Construct or establish the blind or hunt site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind; and

(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department based on weather or water level conflicts.

(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements. (1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.

(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(3) A person shall not:

(a) Hunt on an area marked by a sign as closed to hunting;

(b) Enter an area marked by signs as closed to public access; or

(c) Hunt a species on an area marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

1. The daily bag limit for ducks is greater than three (3); and

2. The daily bag limit for Canada goose is greater than or equal to two (2);

(b) At least one (1) person in a waterfowl blind shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site at Ballard or Boatwright WMA.

(5) At Ballard WMA:

(a) The duck, coot, merganser, and goose season shall be December 5 through January 27;

(b)[and merganser season shall be December 7 through January 29.

(b) The goose season shall be December 7 through January 29.

(c)] Youth waterfowl season shall be the first full weekend in February; and

(c)[. (d)] A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Day, or New Year's Day.

(d)[(e)] A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 5[6] of this administrative regulation;

2. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard Wildlife Management Area from October 15 through March 15; and

3. Exit the area by 2 p.m. during the regular waterfowl season, except as authorized by the department.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Day, or New Year's Day;

2. Obtain a daily check-in card by 8 a.m. before entering the area from December 5 through January 27;[7 through January 29.]

3. Check out the same day by:

a. Visiting the designated Check station prior to 8 a.m.; or

b. Depositing the check-in card at a department-designated drop point after 8 a.m.;

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting.

(c) A department blind or hunt site shall be assigned through a daily drawing through January 27[30].

(d) A department blind or hunt site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt site has not been assigned during the daily drawing.

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season.

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or

2. A mobility-impaired hunter may hunt from a boat.

(g) A party shall only hunt waterfowl:

1. From a department blind; or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a hunt site in December and January during the regular waterfowl season.

(h) On the Peal unit:

1. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

2. More than four (4) parties shall not hunt at the same time on Fish Lake;

3. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;

4. A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt site during December and January.

(i) On the Swan Lake Unit:

1. A person shall not hunt waterfowl from November 22 through December 4[25 through December 5];

2. The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and

3. Blind restrictions shall not apply to the Light Goose Conservation Order season.

(7) Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a blind site;

(b) Waterfowl refuge areas:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile fifty-one (51), at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile fifty-five and five-tenths (55.5) shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(8) Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(9) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(10) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(11) Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(12) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise

until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(d) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, Number Four Lake, and Upper Goose Lake, all waterfowl hunting after November 1:

1. Shall be from hunt sites assigned by a random preseason drawing; and

2. Shall be within ten (10) yards of a hunt site, including periods of Mississippi River flooding.

(13) Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; and

(d) Within three-quarters (3/4) of a mile from the dam.

(14) Green River Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(15) Kaler Bottoms WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(16) Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys;

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A person hunting waterfowl shall remove decoys and personal items daily.

(17) Obion Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(18) Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15.

(c) Shooting hours shall be one-half (1/2) hours before sunrise until 2 p.m.

(d) A person shall not enter a hunting area prior to 4 a.m. daily.

(19) Peabody WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and

2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(20) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(21) Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.

(d) On the Grassy-Pond Powell's Lake Unit, a person hunting waterfowl:

1. Shall hunt:

a. From a department blind; or

b. From a blind within twenty-five (25) yards of a blind site.

2. Shall remove decoys and personal items from the area on a daily basis.

(e) On the Jenny Hole-Highlands Creek Unit, a person hunting waterfowl

1. Shall hunt:

a. From a department blind;

b. Within twenty-five (25) yards of a hunt site; or

c. No closer than 200 yards of another hunting party.

2. Shall remove decoys and personal items from the area on a daily basis.

(f) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(g) A person hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from a blind assigned by the department through a drawing as established in Section 5[~~6~~] of this administrative regulation;

2. May occupy a permitted blind if not claimed by the permittee within one (1) hour before sunrise;

3. Shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-five (25) if:

a.[~~(a)~~] The daily bag limit for ducks is greater than three (3); and

b.[~~(b)~~] The daily bag limit for Canada goose is greater than or equal to two (2);

4. Shall be accompanied by an adult if under eighteen (18) years of age; and

5. The waterfowl blind for a mobility-impaired person shall be open to the public if the permit holder or another mobility-impaired person has not claimed the blind on that day by one (1) hour before sunrise.

(h) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except for:

1. Waterfowl from November 1 through March 15; and

2. The modern gun deer season.

(i) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(j) Hunters drawn to hunt Sloughs WMA through a preseason draw shall submit a completed department-issued survey at the conclusion of their hunt or will be ineligible to participate in the waterfowl blind or quota draw the following year.

(22) South Shore WMA.

(a) The WMA shall be closed to hunting from November 15 through January 15, except for waterfowl[~~quota waterfowl hunting~~] and dove hunting.

(b) A hunter shall use a department blind.

(c) A department blind will be available daily on a first-come, first-served basis[~~A department blind shall be allocated by a preseason drawing~~].

(23) Taylorsville Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(24) Yatesville Lake WMA. 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 from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(25) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 5. (1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply through the vendor supplied by the department by calling 1-877-598-2401, or by completing the online application process on the department's Web site[~~website~~] at fw.ky.gov;[~~.~~]

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt may bring up to three (3) additional hunters.

(3) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of Barren River, Grayson Lake, Greenbo Lake, Lake Barkley, Lincoln Homestead, Nolin Lake, Paintsville Lake, Pennyrile Lake, Rough River Lake, and Yatesville Lake State Parks.

(2) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days that the park office is not open.

(3) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(4) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days that the park office is not open.

(5) Statewide waterfowl hunting requirements shall apply.

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts. (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries each Saturday and Sunday in January.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.

(3) A youth or mobility-impaired person shall register in advance and carry a department provided postcard notification on the day of the hunt.

(4) A mobility-impaired person shall also submit a mobility-impaired access permit.

(5) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(6) Each youth shall not be accompanied by more than one (1) adult.

(7) One (1) adult may accompany two (2) youths.

(8) A mobility-impaired hunter may be accompanied by no more than one (1) assistant who may also hunt.

(9) A person shall hunt from an established blind and shall not change blinds.

(10) A blind shall not be used by more than four (4) hunters.

(11) A person shall only discharge a firearm from a blind.

(12) A person shall not possess more than fifteen (15) shotshells.

(13) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(14) A person shall encase a firearm if traveling to and from a blind.

(15) Hunting shall end at noon, and hunters shall exit the area by 1 p.m.

(16) All decoys and equipment shall be removed at the end of each day's hunt.

(17) A hunter shall report harvest by depositing a completed hunt permit at the designated location.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: October 15, 2012

FILED WITH LRC: October 31, 2012 at noon

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2012–2013 waterfowl hunting requirements in accordance with the USFWS and Kentucky Department of Fish and Wildlife Resources management objectives.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates, bag limits and other hunting requirements. KRS 150.360 authorizes the department to restrict methods and hunting hours for taking 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 waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation manages waterfowl populations and hunting opportunity consistent with state, 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 the existing administrative regulation: This amendment sets hunting dates on Ballard and the Swan Lake Unit of Boatwright WMAs, requires hunters participating in preseason waterfowl blind draws on Sloughs WMA to participate in a post season survey and removes the pre-season draw for waterfowl hunting on South Shore WMA.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide adequate public hunting opportunity with minimal area use conflict.

(c) How does the amendment conform 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 that will be affected: 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 of 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 amendments in season dates and hunting requirements will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting seasons.

(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 or amended 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 continued opportunity for quality waterfowl hunting on public areas.

(5) Provide an estimate of how much it will cost to implement

this administrative regulation:

(a) Initially: This administrative regulation change will result in no additional cost to the Kentucky Department of Fish and Wildlife Resources to administer.

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

(6) What is the source of 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 funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl 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's Wildlife Division and Law Enforcement Division.

(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 of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits 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 amendment for the first year.

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

(c) How much will it cost to administer this program for the first year? No new costs will be incurred in the administration of this program for the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 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 within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the 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? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The greatest wintering and migrating waterfowl concentrations are located on public lands managed by the Department. The Department imposes more restrictive hunting regulations on these lands in effort to meet waterfowl management objectives while still providing quality hunting opportunity.

STATEMENT OF EMERGENCY
301 KAR 2:224E

This emergency administrative regulation establishes waterfowl hunting zones. Waterfowl hunting season frameworks are set 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 waterfowl season. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler by October 31, 2012.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
STEVEN L. BESHEAR, Governor

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

301 KAR 2:224E. Waterfowl hunting zones.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 59 C.F.R. 20

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

EFFECTIVE: October 31, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to make administrative regulations apply to a limited area or to the entire state.[~~Unevenly distributed waterfowl resources and federal requirements necessitate different season dates and harvest administrative regulations in different sections of the Commonwealth.~~] This administrative regulation establishes waterfowl hunting zones.

Section 1. Goose Hunting Zones. (1) The Western Goose Zone includes Henderson County and the portion of Kentucky west of:

(a) US 60 from the Henderson-Union County line to US 641;

(b) US 641 to Interstate 24;

(c) Interstate 24 to the Purchase Parkway; and

(d) The Purchase Parkway.

(2) The Ballard Zone[~~Reporting Area~~] includes the portion of Ballard County north or west of:

(a) The Ballard-McCracken County line to State Road 358;

(b) State Road 358 to US 60;

(c) US 60 to the city limits of Wickliffe;

(d) The city limits of Wickliffe to the center of the Mississippi River.

(3) Counties associated with the Ballard Reporting Area include:

(a) The portion of Ballard County not included in the Ballard Zone[~~Reporting Area~~];

(b) Carlisle and McCracken Counties; and

(c) The portions of Fulton, Graves, Hickman and Marshall Counties in the Western Goose Zone.

(4) The Henderson-Union Zone[~~Reporting Area~~] includes Henderson County and the portion of Union County in the Western Goose Zone.

(5) Counties associated with the Henderson-Union Zone[~~Reporting Area~~] include those portions of Crittenden, Livingston and Lyon Counties in the Western Goose Zone.

(6) The Pennyroyal-Coalfield Goose Zone includes the area from the Western Goose Zone to and including Simpson, Warren, Butler, Ohio, and Daviess Counties.

(7) The Eastern Goose Zone includes the portions of Kentucky not included in the Western or Pennyroyal-Coalfield Goose Zones.

(8) The West-Central Special Hunt Zone includes:

(a) Muhlenburg County;

(b) Ohio County south of Rough River;

(c) Butler County west of Highway 79 and north of Highway 70;

(d) Hopkins County:

1. East of Highways 814 and 109;

2. South of US 41A between Highways 814 and Madisonville; and

3. South of Highway 85 east of Madisonville.

(9) The Northeast Special Hunt Zone includes Bath, Menifee, Morgan and Rowan Counties, except Paintsville Lake and its shoreline in Morgan County.

Section 2. Duck, Coot, and Merganser Hunting Zones. (1) The Western Duck Zone includes the portion of Kentucky in the Western and Pennyroyal-Coalfield Goose Zones.

(2) The Eastern Duck Zone includes the portion of Kentucky not in the Western Duck Zone.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: October 15, 2012

FILED WITH LRC: October 31, 2012 at noon

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation changes the name of the Ballard and Henderson-Union Reporting Areas to the Ballard and Henderson-Union Zones.

(b) The necessity of the administrative regulation: To reduce hunter confusion about regulations pertaining to these specific areas.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates and 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.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation manages waterfowl populations and hunting opportunity 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 the existing administrative regulation: It will change the name of the Ballard and Henderson-Union Reporting Areas to the Ballard and Henderson-Union Zones. There will be no changes other than the name of these two areas.

(b) The necessity of the amendment to this administrative regulation: The USFWS suspended Canada goose harvest quotas and reporting requirements within these two reporting areas with adoption of a new Mississippi Valley Population Management Plan. Kentucky continues to use area specific regulations to meet state and regional waterfowl management objectives but the term "reporting area" confused hunters who thought they were still mandated to report harvest. Changing the name from "reporting area" to zone will help reduce this confusion.

(c) How the amendment will assist in the effective administration of the 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 that will be affected: 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 of 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 change in name from "reporting area" to "zone" will be published in the fall waterfowl hunting guide and on the department's Web site. Hunters will need to follow all applicable amendments to the hunting seasons.

(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 reduced confusion regarding waterfowl reporting requirements while continuing provide increased opportunity to hunt waterfowl in the state.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

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

(6) What is the source of 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 funding to implement this administrative regulation.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person:Rose Mack

(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's Wildlife Division and Law Enforcement Divisions.

(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 establish hunting season dates and 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.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 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 within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the 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? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The season on snow geese is shorter than the federal framework because migration patterns for this species result in a paucity of birds early in the federal framework. The Canada goose season in the Northeast Goose Zone is shorter than is permitted in the rest of the state because of the desire to maintain a huntable population in that region of the state.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Department of the Controller
Office of Financial Management
(As Amended at ARRS, November 13, 2012)

200 KAR 14:011. Qualified Investments.

RELATES TO: KRS 42.500(9)-(14), 42.520, 42.525***, 17 C.F.R. 270.2a-7, 15 U.S.C. 80a, 26 U.S.C. 1-9834***

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[Dealers] Association master contract between two (2) parties to exchange, or have the conditional right to exchange, specified cash flows.

(5) "***NRSRO" ["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; ***and***

(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. ***(1)*** The commission may:

(a)[(1)] Engage in securities lending.

(b)[; (2)] Allow inter-pool transfers to meet short term cash needs.

(2)[; 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, ***26 U.S.C. 1-9834,*** 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)***(a)*** Money market securities, including:

1.[(a)] Commercial paper;

2.[(b)] Certificates of deposit; ***and***[~~and~~]

3.[(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.~~]

(b)[(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***[~~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) ***The investment amount for a single mutual fund shall not exceed ten (10) percent of total pool assets.***[~~***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 ***in this administrative regulation***[~~***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 ***if a situation arises which could damage the state's credit***.

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 ***Rule 2a-7***[~~***Section 2a.7***~~***]*** of the Investment Company Act of 1940***, 17 C.F.R. 270.2a-7***. Terms used in this section shall have the definitions prescribed in the Investment Company Act of 1940***, 15 U.S.C. 80a-1 through 80a-64***.[~~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.~~]

(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)[~~(c)~~] 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) [~~(d)~~] 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)~~]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.

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.

FINANCE AND ADMINISTRATION CABINET
Department of the Controller
Office of Financial Management
(As Amended at ARRS, November 13, 2012)

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 regulation 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 repur-

chase 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.

(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

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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.

FINANCE AND ADMINISTRATION CABINET
Department of the Controller
Office of Financial Management
(As Amended at ARRS, November 13, 2012)

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 42.500(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***[,]*** 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) ***"NRSRO"***[~~"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.

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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Barbering
(As Amended at ARRS, November 13, 2012)

201 KAR 14:105. Barbering school enrollment and postgraduate 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.

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 ***or a person who can make policy for the 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.

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.

GENERAL GOVERNMENT
Board of Physical Therapy
(As Amended at ARRS, November 13, 2012)

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

RELATES TO: KRS 327.040, 327.070

STATUTORY AUTHORITY: KRS 327.040(11), (12), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040 (12) and (13) authorize the Board of Physical Therapy to establish by administrative regulation a code of ethical standards and standards of practice for physical therapists and physical therapist assistants. This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070.

Section 1. Code of Ethical Standards. (1) Physical therapists and physical therapist assistants shall:

(a) Respect the rights and dignity of all patients;

(b) Practice within the scope of the credential holder's training, expertise and experience;

(c) 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)[~~(d)~~] Report to the board any civil judgment, settlement, or civil claim involving the credential holder's practice of physical therapy made against the credential holder relating to the credential holder's own physical therapy practice within thirty (30) days.

(2) Physical therapists and physical therapist assistants shall not:

(a) Verbally or physically abuse a client; or

(b) Continue physical therapy services beyond the point of reasonable benefit to the patient, unless the patient consents in writing.

Section 2. Standards of Practice for the Physical Therapist. While engaged in the practice of physical therapy, a physical therapist shall:

(1) Perform screenings in order to:

(a) Provide information on a person's health status relating to physical therapy;

(b) Determine the need for physical therapy evaluation and treatment;

(c) Make a recommendation regarding a person's ability to return to work or physical activity; and

(d) Provide physical therapy services;

(2) Evaluate each patient prior to initiation of treatment;

(3) Upon receipt of a patient under an active plan of care from another physical therapy service, the receiving physical therapist shall:

(a) Complete an initial evaluation in compliance with Sections 2(2) and 5(1)(a)-(e) 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.[~~(c)~~] 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.[~~(d)~~] During this grace period treatment may continue based upon the previous reassessment or initial evaluation;

(c)[~~(e)~~] Reassessing each patient not otherwise noted every thirty (30) days following the initial evaluation or subsequent reassessment;

(d)[~~(f)~~] Reassessing a patient whose medical condition has changed;

(5) Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;

(6) Be responsible for the physical therapy record of each patient;

(7) Provide services that meet or exceed the generally accepted practice of the profession;

(8) Explain the plan of care to the patient, to others designated by the patient, and to appropriate professionals;

(9) Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supplier if the physical therapist makes recommendations for those; 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[~~:1.~~] supervising not more than four (4)[~~full-time~~] physical therapist assistants or supportive personnel; ***and***[~~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) ***Abide by the maximum staffing ratio of physical therapists to physical therapist assistants or supportive personnel required in this section except that a maximum[~~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***(20)[(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 assistant and supportive personnel;

(e) Supervising the physical therapist assistant by being available and accessible by telecommunications during the working hours of the physical therapist assistant;

(f) 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***, and[~~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 summary, 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***, which*** 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.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 13, 2012)

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

RELATES TO: KRS 156.160(1)(a), (d), 158.645, 158.6451
STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (d)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The content standards for the courses of study are established in the Kentucky core academic standards ***incorporated by reference in*** 704 KAR 3:303. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

Section 1. [~~Until the graduating class of 2012, each student in a common school shall complete an individual learning plan which incorporates emphasis on career development and shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the following minimum requirements:~~
~~(1) Language arts: Four (4) credits (including English I, II, III, and IV);~~
~~(2) Social studies: three (3) credits (to incorporate U.S. History, Economic, Government, World Geography, and World Civilization);~~
~~(3) Mathematics: three (3) credits (including Algebra I, Geometry, and one (1) elective as provided in the Kentucky core academic standards, 704 KAR 3:303);~~
~~(4) Science: three (3) credits (including life science, physical science, and earth and space science as provided in the Kentucky core academic standards, 704 KAR 3:303);~~
~~(5) Health: one-half (1/2) credit;~~
~~(6) Physical education: one-half (1/2) credit;~~
~~(7) History and appreciation of visual and performing arts (or another arts course which incorporates this content): one (1) credit; and~~
~~(8) Electives: seven (7) credits.~~]

~~Section 2. Beginning with the graduating class of 2012,~~] Each student in a common school shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the content standards as provided in the Kentucky core academic standards, ***incorporated by reference in*** 704 KAR 3:303. Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content. The required credits and demonstrated competencies shall include the following minimum requirements:

(1) Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky core academic standards for English and language arts.

(a) Language arts shall be taken each year of high school.

(b) If a student does not meet the college readiness benchmarks for English and language arts as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take an English and language arts transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(2) Social studies - three (3) credits to include the content contained in the Kentucky core academic standards for social studies;

(3) Mathematics - ***[~~four (4) courses of mathematics, including~~]***three (3) credits ***to[~~that shall~~]*** include the content contained in the Kentucky core academic standards for mathematics and include the following minimum requirements:

(a) Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky core academic standards, ***incorporated by reference in*** 704 KAR 3:303;

(b) A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce;***[~~and~~]***

(c) ***Any mathematics course other than Algebra I, Geometry, or Algebra II shall be counted as an elective; and***

(d) If a student does not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is monitored to address remediation needs, before exiting high school;***[~~and~~***

~~(d) Prealgebra shall not be counted as one (1) of the three (3) required mathematics credits for high school graduation but may be counted as an elective~~];

(4) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky core academic standards for science[~~health~~];

(5) Health - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for health;

(6) Physical education - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for physical education;

(7) History and appreciation of visual and performing arts (or another arts course which incorporates this content) - one (1) credit to include the content contained in the Kentucky core academic standards for arts and humanities or a standards-based specialized arts course based on the student's individual learning plan;

(8) Academic and career interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and

(9) Demonstrated performance-based competency in technology.

Section 2[~~3~~]. (1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060.

(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards.

Section 3[~~4~~]. (1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address Vocational Studies Academic Expectations 2.36-2.38 as established in Academic expectations, 703 KAR 4:060.

(2) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parent ***receives[~~shall receive~~]*** information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

(4) A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.

(5) Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic

courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

(6) Beginning with the graduating class of 2013, the development of the individual learning plan for each student shall begin by the end of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.

Section 4[~~5~~]. (1) A board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the Kentucky core academic standards, ***incorporated by reference in*** 704 KAR 3:303, and a rigorous performance standards policy established by the board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.

(2) A board of education shall award credit toward high school graduation based on:

(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one ***(1)*** subject; or

(b) A standards-based performance-based credit, regardless of the number of instructional hours in one (1) subject.

(3) A local board of education which has chosen to award standards-based performance-based credit shall award a standards-based credit earned by a student enrolled in grade 5, 6, 7, or 8 if:

(a) The content of the course is the same that is established in the Kentucky core academic standards, ***incorporated by reference in*** 704 KAR 3:303; and

(b) The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.

(4) A board of education which has chosen to award standards-based performance-based credit shall establish a policy for a performance-based credit system that includes:

(a) The procedures for developing performance-based credit systems and for amending the system;

(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Content standards as addressed in 704 KAR 3:303, ***Required[~~Kentucky~~]*** core academic standards, and 703 KAR 4:060, Academic expectations;

(e) The extent to which state-provided assessments will be used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are:

1. Designed to further student progress towards the individual learning plan;

2. Supervised by qualified instructors; and

3. Aligned with state and local content and performance standards.

(5) A board of education may award standards-based, performance-based credit toward high school graduation for:

(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with Section 1[~~or 2~~] of this administrative regulation;

(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;

(c) Standards-based portfolios, senior year, or capstone projects;

(d) Standards-based online or other technology mediated courses;

(e) Standards-based dual credit or other equivalency courses; or

(f) Standards-based internship, cooperative learning experience, or other supervised experience in the school ***or[~~and~~]*** the community.

(6) Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1)(b) and 703 KAR 4:060.

Section 5[~~6~~]. (1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education shall be awarded a graduation diploma.

(2) The local board of education shall award the diploma.

Section 6[~~7~~]. This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal, or teacher from awarding special recognition to a student.

Section 7. Beginning with the graduating class of 2013, if the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Section 1 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered. (1) This course of study shall be based upon student needs and the provisions specified in 704 KAR 3:303, ***Required[~~Kentucky~~]*** core academic standards, and shall be reviewed at least annually.

(2) A student who completes this course of study shall receive an alternative high school diploma to be awarded by the local board of education consistent with the graduation practices for all students.

(3) A local board of education may establish policies to award an alternative high school diploma to a former student who has received a certificate or certificate of attainment.[~~8. (1) Until the graduating class of 2012, if the severity of an exceptional student's disability precludes a course of study leading to receipt of a diploma, an alternative program shall be offered.~~

~~(a) This program shall be based upon student needs, as specified in the individual educational plan, and shall be reviewed at least annually.~~

~~(b) A student who completes this course of study shall be recognized for achievement.~~

~~(c) This may be accomplished by the local board of education awarding a certificate.~~]

~~(2) Beginning with the graduating class of 2012, if the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Section 2 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered.~~

~~(a) This course of study shall be based upon student needs and the provisions specified in 704 KAR 3:303, Kentucky core academic standards, and shall be reviewed at least annually.~~

~~(b) A student who completes this course of study shall receive a certificate of attainment to be awarded by the local board of education consistent with the graduation practices for all students.~~]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLLIDAY, Ph.D.
DAVID KAREM, Chairperson

APPROVED BY AGENCY: August 15, 2012

FILED WITH LRC: August 15, 2012 at noon

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ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, November 13, 2012)

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS 61.870-884, ***278.010, 278.020(3), 278.100, 278.180, 278.300, 365.015, 369.102, 424.300, 47 C.F.R. 36[278.020(3), 278.300]***[Chapter 278]

STATUTORY AUTHORITY: KRS 278.040(3), 278.310[(2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.310[(2)] ***requires[provides]*** that all hearings and investigations before the commission ***[or any commissioner]***shall be governed by rules ***promulgated[adopted]*** by the commission. This administrative regulation ***establishes[prescribes]*** requirements with respect to formal and informal proceedings before the commission.

Section 1. Definitions.(1) ***"Affiliate" means an entity:***

(a) That is wholly owned by a utility;

(b) In which a utility has a controlling interest;

(c) That wholly owns a utility;

(d) That has a controlling interest in a utility; or

(e) That is under common control with the utility.

(2) "Case" means a matter coming formally before the commission.

(3)[(2)] "Commission" is defined by KRS 278.010(15).

(4) "Controlling interest in" and "under common control with" mean a utility or other entity if the utility or entity:

(a) Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of another entity; and

(b) Exercises that power:

1. Through one (1) or more intermediary companies, or alone;

2. In conjunction with, or pursuant to an agreement;

3. Through ownership of ten (10) percent or more of the voting securities;

4. Through common directors, officers, stockholders, voting or holding trusts, associated companies;

5. By contract; or

6. Through direct or indirect means.

(5)[(3)] "Electronic mail" means an electronic message that is sent to an electronic mail address and transmitted between two (2) or more telecommunications devices, computers, or electronic devices capable of receiving electronic messages.

(6)[(4)] "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered, and consists of a user name or mailbox and a reference to an Internet domain.

(7)[(5)] "Executive director" means the person appointed to the position established in KRS 278.100 or a person that he or she has designated to perform a duty or duties assigned to that position.

(8)[(6)] **"Paper" means, regardless of the medium on which it is recorded, an application, petition, or other initiating document, motion, complaint, answer, response, reply, notice, request for information, or other document that this administrative regulation or the commission directs or permits a party to file in a case.**

(9)[(7)][(6)] "Party" means ***a[any]*** person who:

(a) Initiates action through the filing of a formal complaint, application, or petition;

(b) Files a tariff or tariff sheet with the commission pursuant to KRS 278.180 and 807 KAR 5:011 that the commission has suspended and established a case to investigate or review;

(c) Is named as a defendant in a formal complaint filed pursuant to Section 19 of this administrative regulation;

(d) Is granted leave to intervene pursuant to Section 4(11) of this administrative regulation; or

(e) Is joined as a party to a commission proceeding.

(10)[(8)][(7)] "Person" is defined by KRS 278.010(2).

(11)[(9)][(8)] "Sewage ***utility***" means a utility that meets the requirements of KRS ***278.010(3)(f)[278.010(12)]***.

(12)[(10)][(9)] "Signature" means an original signature or an electronic signature as defined by KRS 369.102(8).

(13)[(11)][(10)] "Utility" is defined by KRS 278.010(3).

Section 2.***[General Offices and]*** Hearings.***[(1) The commission shall be in continuous session for the performance of administrative duties.***

(2) Meetings of the commission for the consideration of all matters requiring formal hearings shall be held on days, at hours and at places as the commission may designate.

(3)] The commission shall provide notice of hearing in a case by order except ***if[when]*** a hearing is not concluded on the designated day and the presiding officer verbally announces the date for continuation of the hearing. ***A verbal announcement[Verbal announcements]*** made by the presiding officer shall be deemed proper notice of the continued hearing.

Section 3. Executive Director to Furnish Information. (1) Upon request, the executive director shall:

(a) Advise***[any person]*** as to the form of a petition, complaint, answer, application, or other document desired to be filed;

(b) Provide general information regarding the commission's procedures and practices; and

(c) Make available from the commission's files, upon request, ***a[any]*** document or record pertinent to ***a[any]*** matter before the commission unless KRS 61.878 expressly exempts the document or record from inspection or release.

(2) The executive director ***shall reject for filing a document that[may reject for filing any document which]*** on its face does not comply with ***807 KAR Chapter 5[the administrative regulations of the commission]***.

Section 4. General Matters Pertaining to All Formal Proceedings. (1) Address of the commission. All communications shall be addressed to***: ["]***Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40601.***["]***

(2) Case numbers and styles. Each case shall receive a number and a style descriptive of the subject matter. The number and style shall be placed on ***each subsequent document[all subsequent documents]*** filed in the case.

(3) Signing of **papers[pleadings]**.

(a) A **paper[pleading]** shall be signed by the submitting party or attorney and shall include the name, address, telephone number, facsimile number, and electronic mail address, if any, of the attorney of record or filing party.

(b) A **paper[pleading]** shall be verified or under oath ***if[when]*** required by statute, administrative regulation, or order of the commission.

(4) A person shall not file ***a[any]*** **paper[pleading]** on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2). An attorney who is not licensed to practice law in Kentucky shall present evidence of his or her compliance with SCR 3.030(2) ***if[when]*** appearing before the commission.

(5) Amendments. Upon motion of a party ***and for good cause shown***, the commission ***shall allow a[may allow any]*** complaint, application, answer, or other **paper[pleading or document]** to be amended or corrected or ***an[any]*** omission supplied***[therein]***. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original **paper[pleading or document]**.

(6) Witnesses and subpoenas.

(a) Upon the **written request[application]** of ***a[any]*** party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, documents, or records (unless directed to issue by the commission on its own authority) may be issued by the commission ***or a[, or any]*** commissioner, upon **written request[application in writing]**, stating as nearly as possible the books, accounts, documents, or records desired to be produced.

(c) A party shall submit a completed subpoena with its **written request[application]** ***as[when]*** necessary.

(d) Every subpoena shall be served, in the manner prescribed by subsection (8) of this section, on each party and any person whose information is being requested.

(e) Copies of all documents received in response to a subpoena shall be filed with the commission and furnished to all other parties to the case, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be made available for inspection by the commission and all other parties to the action.

(7) Computation of time.

(a) In computing ***a[any]*** period of time prescribed or allowed by order of the commission or by ***807 KAR Chapter 5 or KRS Chapter 74 or 278[any applicable administrative regulation or statute]***, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed, in which event the period shall run until the end of the next day ***that[which]*** is not a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed.

(8) Service.

(a) Unless the commission orders otherwise, service shall be made upon the party's attorney ***if[when]*** the party is represented by an attorney.

(b) Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it **by United States mail or other recognized mail carrier** to the attorney or party at the last known address or by sending it by electronic means to the electronic mail address listed on **papers[pleadings]** that the attorney or party has submitted in the case. Service shall be complete upon mailing or electronic transmission**. If a serving party learns that the mailing or electronic transmission did not reach the person to be served, the serving party shall take reasonable steps to immediately re-serve the party to be served, unless service is refused, in which case the serving party shall not be required to take additional action.[.but electronic transmission shall not be effective if the serving party learns that it did not reach the person to be served.]**

(9) Filing.

(a) Unless electronic filing procedures ***established[set forth]*** in Section 8 of this administrative regulation are used, a document shall not be deemed filed with the commission until it is physically received by the executive director at the commission's offices during the commission's official business hours.

(b) The executive director shall endorse upon each **paper [pleading]** or document accepted for filing the date of its filing. The endorsement shall constitute the filing of the **paper [pleading]** or document.

(10) Privacy protection for filings.

(a) If a party files a document containing an individual's Social Security number, taxpayer identification number, birth date, or a financial account number, the party shall redact the document so the following information cannot be read:

1. The digits of the Social Security number or taxpayer identification number;

2. The month and day of an individual's birth; and

3. The digits of the financial account number.

(b) To redact the document, the filing party shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(c) The executive director shall not be required to review documents for compliance with this section. The responsibility to redact a document shall rest with the party that files the document.

(11) Intervention and parties.

(a) In ***a[any]*** formal proceeding, ***a[any]*** person who wishes to become a party to a proceeding before the commission may**,** by timely motion**,** request that leave to intervene be granted. The motion shall include the movant's name and address and shall state his or her interest in the proceeding and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(b) The commission shall grant a person leave to intervene if ***the commission[it]*** finds that a person has a special interest in the case ***that[which]*** is not otherwise adequately represented or that intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(c) **Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a party shall serve a person[Persons]** granted leave to intervene**[shall be served]** with filed testimony, exhibits, **papers[pleadings]**, correspondence, and all other documents **that the party submits[submitted by the parties]** in the case **after the order granting intervention, but is not required to provide any documents submitted prior to the issuance of that order**.

(d) ***A[Any]*** person who the commission has not granted leave to intervene in a case may file written comments regarding the subject matter of the case. These comments shall be filed in the case record. **A person filing written comments shall not be deemed a party to the proceeding and need not be named as a party to an appeal.**

Section 5. Motion Practice. (1) All requests for relief ***that[which]*** are not required to be made in **an application, petition, or written request[a pleading]** shall be by motion. A motion shall state precisely the relief requested.

(2) Unless the commission orders otherwise, a party to a case shall file ***a[any]*** response to a motion no later than seven (7) days from the date of filing of a motion.

(3) Unless the commission orders otherwise, a party shall file ***a[any]*** reply no later than five (5) days of the filing of the most recent response to the party's motion. The reply shall be **confined to points raised[limited to the matters initially raised]** in the responses **to which they are addressed, and shall not reiterate an argument already presented[to the party's motion]**.

Section 6. Certificate of Service. All documents served ***pursuant to 807 KAR Chapter 5[under these administrative regulations]*** shall have a proof of service certification. Proof of service shall state the date and method of service and shall be signed by a person who can verify service.

Section 7. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures ***established[set forth]*** in Section 8 of this administrative regulation are used, ***if[when]*** **a[an original]** document **in paper medium** is filed with the commission, ten (10) additional copies **in paper medium** shall also be filed.

(2) All documents filed with the commission shall conform to the requirements established in this subsection.

(a) Form. ***Each filing[Filings]*** shall be printed or typewritten, double spaced**,** and on one (1) side of the **page[paper]** only.

(b) Size. ***Each filing[Filings]*** shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper***[stock]***.

(c) Font. ***Each filing[Filings]*** shall be in type no smaller than twelve (12) point, except footnotes**,** which may be in type no smaller than ten (10) point.

(d) Binding. ***A[Any]*** side-bound or top-bound filing shall also include an identical unbound copy.

(3) Except as provided for in Section 8 of this administrative regulation, ***a[any]*** filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) ***A document[Documents]*** submitted by facsimile transmission shall not be accepted.

Section 8. Electronic Filing Procedures. (1) Upon an applicant's timely election of the use of electronic filing procedures or upon **order[motion]** of the commission **in a case that the commission has initiated on its own motion**, the procedures established in this section shall be used in lieu of other filing procedures ***established[set forth]*** in this administrative regulation.

(2) At least seven (7) days prior to the submission of its appli-

cation, an applicant shall:

(a) File with the commission written notice of its election to use electronic filing procedures using the Notice of Election of ***Use of*** Electronic Filing Procedures form; and

(b) If it does not have an account for electronic filing with the commission, register for an account at http://psc.ky.gov/Account/Register.

(3) All **papers[~~pleadings~~]**, documents, and exhibits shall be filed with the commission by uploading an electronic version of the document using the commission's E-Filing System at http://psc.ky.gov. In addition, the filing party shall file one (1) original with the commission as required by subsection (12)(a)2. of this section.

(4)***(a) Audio or video files.***

1. A file containing audio material shall be submitted in MP3 format.

2. A file containing video material shall be submitted in MPEG-4 format.

(b) Except as established in paragraph (a) of this subsection, each file in an electronic submission shall be:

1.[~~(a)~~] In portable document format;

2.[~~(b)~~] Search-capable;

3.[~~(c)~~] Optimized for viewing over the Internet;

4.[~~(d)~~] Bookmarked to distinguish sections of the **paper, except that documents filed in response to requests for information need not be individually bookmarked[~~pleading or document~~]**; and

5.[~~(e)~~] If a scanned document, scanned at a resolution of no less than 300 dots per inch.

(5)(a) ***Each electronic submission[~~All electronic submissions~~]*** shall include an introductory file in portable document format that is named "Read1st" and that contains:

1. A general description of the filing;

2. A list of all ***material to be filed but[~~materials~~]*** not included in the electronic filing; and

3. A statement attesting that the electronically filed documents are a true representation of the original documents.

(b) The "Read1st" file and any other document that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the paper **medium** filing may be substituted for a general description.

(d) If the electronic submission does not include all documents contained in the paper **medium** version***[~~(e.g., confidential materials, materials that are too large to transfer by electronic medium)~~]***, the absence of these documents shall be noted in the "Read1st" document.

(6)(a) An electronic transmission or uploading session shall not exceed twenty (20) files.

(b) An individual file shall not exceed fifty (50) megabytes.

(c) If a filing party's submission exceeds the limitations established in paragraph (a) or (b) of this subsection, the filer shall make ***[~~its~~]***electronic submission in two (2) or more consecutive electronic transmission or uploading sessions.

(7) If filing ***a[~~any~~]*** document with the commission, the filing party shall certify that:

(a) The electronic version of the filing is a true and accurate copy of each document filed in paper medium;

(b) The electronic version of the filing has been transmitted to the commission; and

(c) A copy of the filing in paper medium has been mailed to all parties that the commission has excused from participation by electronic means.

(8)(a) Upon completion of a party's uploading of an electronic submission, the commission shall cause an electronic mail message to be sent to all parties of record advising that an electronic submission has been made to the commission.

(b) Upon a party's receipt of this message, it shall be the receiving party's responsibility to access the commission's electronic file depository at http://psc.ky.gov and view or download the submission.

(9) Unless ***a party granted leave[~~it~~]*** states its objection to the use of electronic filing procedures in ***a[~~its~~]*** motion for intervention, a party granted leave to intervene shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all **papers[~~documents and pleadings~~]**, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order of the commission granting ***the[~~its~~]*** intervention a written statement that:

1. ***The party[~~It~~]*** waives any right to service of commission orders by United States mail; and

2. ***The party, or the party's[~~It, or its~~]*** authorized agent, possesses the facilities to receive electronic transmissions.

(10) Unless a party to a case states ***an[~~its~~]*** objection to the use of electronic filing procedures within seven (7) days of issuance of an order in which the commission orders the use of electronic filing procedures on its own motion, that party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all documents and **papers[~~pleadings~~]**, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order directing the use of electronic filing procedures a written statement that:

1. ***The party[~~It~~]*** waives any right to service of commission orders by United States mail; and

2. ***The party, or the party's[~~It, or its~~]*** authorized agent, possesses the facilities to receive electronic transmissions.

(11) If a party objects to the use of electronic filing procedures and***[~~the commission determines that~~]*** good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with Section 4(8) of this administrative regulation.

(12)(a) A document shall be considered timely filed with the commission if:

1. It has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements ***established in[~~imposed by~~]*** this administrative regulation and ***an[~~any~~]*** order of the commission; and

2. The original document, in paper medium, is filed at the commission's offices no later than the second business day following the electronic filing.

(b) ***Each party[~~Parties~~]*** shall attach to the top of the paper submission a**[~~paper~~]** copy **in paper medium** of the electronic mail message from the commission confirming transmission and receipt of its electronic submission.

(13) Except as expressly provided in this section, a party making a filing in accordance with the procedures ***established[~~set forth~~]*** in this section shall not be required to comply with Section 4(8) of this administrative regulation.

Section 9. Hearings and Rehearings. (1) ***Unless required by statute, waived by the parties in the case, or if the commission finds that a hearing is not necessary in the public interest or for the protection of substantial rights[~~Except as otherwise determined in specific cases~~]***, the commission shall grant a hearing in the following classes of cases:

(a) If an order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint to the satisfaction of the commission; or

(b) If an application has been made in a formal proceeding.

(2) Publication of notice.

(a) Upon the filing of ***an[~~any~~]*** application, the commission may order an applicant to give notice on all other persons who may be affected by service of a copy of the application upon those persons or by publication. The applicant shall bear the expense of providing the notice. If the notice is given by publication, the commission may designate the length of time and the newspaper in which the notice shall appear. Proof of the publication shall be filed at or before the hearing.

(b) The commission may order an applicant to give notice to the public of any hearing on the applicant's application. If notice of a hearing pursuant to KRS 424.300 is published by the applicant in a newspaper, it shall be published in a newspaper of general circulation in the areas that will be affected one (1) time not less than seven (7) nor more than twenty-one

(21) days prior to the hearing giving the purpose, time, place, and date of hearing. The applicant shall bear the expense of providing the notice.

(3) Investigation on commission's own motion. The commission may***[at any time]***, on its own motion, ***conduct[make]*** investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission ***believes is in violation of an order of the commission or KRS Chapter 278 or 807 KAR Chapter 5. The commission may also,[may believe is in violation of any law or of any order or administrative regulation of the commission. It may also]*** through its own experts or employees, or otherwise, obtain ***evidence the commission finds[any evidence as it may consider]*** necessary or desirable in ***a[any]*** formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. The commission, on its own motion, through its executive director or upon a **motion[request]** of a party, may convene a conference**[either prior to, or during the course of hearings]** in a case **for the purpose of considering the possibility of settlement, the simplification or clarification of issues, or any other matter that may aid in the handling and disposition of the case**. **Unless the commission directs otherwise or the parties otherwise agree, participation[To provide opportunity for settlement of a proceeding or any issues, the parties to a proceeding may meet in the presence of commission staff upon approval of the executive director. Participation]** in conferences with commission staff shall be limited to parties of the subject proceeding and their representatives.

(5) Conduct of hearings. Hearings shall be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing filed with the commission, the parties to ***a[any]*** proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission shall be given under oath or affirmation.

(8) Objections and exceptions. A party objecting to the admission or exclusion of evidence before the commission shall state the grounds for ***[its]***objection. Formal exceptions shall not be necessary and shall not be taken to rulings on objection.

(9) Record of evidence.

(a) The commission shall cause to be made a record of all hearings. Unless the commission orders otherwise, this record shall be ***a[in]*** digital video recording.

1. A party to a case may, by motion made prior to the hearing, request that a stenographic transcript be made by a ***commission-authorized reporter.***

2.[reporter approved by the commission.] The commission shall grant the motion.

3. The requesting party shall bear the cost of the stenographic transcript and shall ensure ***that*** a copy of the transcript is filed with the commission within a reasonable time after completion of the hearing.

(b) The commission shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.

(c) If a party introduces an exhibit that is neither a document nor a photograph, the commission may direct a photograph of the exhibit be substituted for the exhibit.

Section 10. Briefs. ***Each brief[(1) All briefs]*** shall be filed within the time fixed. ***A[The commission may refuse to consider any brief filed beyond the time fixed. Any]*** request for extension of time to file a brief shall be made to the commission by written motion. ***[(2) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.]***[**(3) A person wishing to submit an amicus curiae brief shall file a motion with the commission specifying with particularity the nature of his or her interest, the points to be presented, and their relevance to the disposition of the case. This motion shall be filed within fifteen (15) days of the time fixed for the filing of the parties' briefs. An amicus curiae brief shall be tendered with the motion.**]

Section 11. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed, may accept certified, or otherwise authenticated, copies of the documents or portions of the same as may be relevant, or may require evidence to be entered as a part of the record.

(2) ***If[Where]*** relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered. If ***[any]***immaterial matter unnecessarily encumbers the record, the book, paper**,** or document shall not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of the matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine the book, paper**,** or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) The sheets of each exhibit**[and the lines of each sheet]** shall be numbered**. If practical, the lines of each sheet shall also be numbered. If[and if]** the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Rate comparisons and other evidence shall be condensed into tables.

(4) Except as ***[may be]***expressly permitted in particular instances, the commission shall not receive in evidence or consider as a part of the record ***a[any]*** book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of ***a[any]*** party to a proceeding, ***the record of a[any]*** case in the commission's files or any document on file with the commission may be made a part of the record by "reference only."

(a) By reference only, the case or document made a part of the record shall not be physically incorporated into the record.

(b) Upon action in the Franklin Circuit Court, excerpts from ***the record of a[any]*** case or part of ***a[any]*** document may be made a part of the record before the court, at the request of ***a[any]*** party.

Section 12. Financial Exhibit. If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall cover operations for a twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed. The exhibit shall disclose the following information in the order indicated ***in subsections (1) through (9)[below]***:

(1) Amount and kinds of stock authorized;

(2) Amount and kinds of stock issued and outstanding;

(3) Terms of preference of preferred stock***,[whether]*** cumulative or participating, or on dividends or assets or otherwise;

(4) ***A*** brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee***[,]*** or trustee, amount of indebtedness authorized to be secured, and the amount of indebtedness actually secured, together with ***[any]***sinking fund provisions***, if applicable***;

(5) Amount of bonds authorized***[,]*** and amount issued, giving the name of the public utility ***that[which]*** issued the same, describing each class separately***[,]*** and giving ***the*** date of issue, face value, rate of interest, date of maturity, and how secured, together with amount of interest paid during the last fiscal year;

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid during the last fiscal year;

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of ***a[any]*** portion of the indebtedness upon or by person or

corporation if the original liability has been transferred, together with amount of interest paid during the last fiscal year.;

(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year; and

(9) ***A*** detailed income statement and balance sheet.

Section 13. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the ***[~~commission or the official custodian of the commission's records determines the~~]***material is confidential.

(2) Procedure for determining confidentiality of material submitted in a case.

(a) ***A person who requests[~~Any person requesting~~]*** confidential treatment of ***[~~any~~]***material shall file a motion that:

1. ***Establishes[~~Sets forth~~]*** specific grounds pursuant to KRS 61.878, upon which the commission should classify that material as confidential;

2. States the time period in which the material should be treated as confidential and the reasons for this time period; and

3. Includes, in a separate sealed envelope marked confidential,[~~and~~

~~2. Attaches~~] one (1) copy of the material **in paper medium** which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification. **If confidential treatment is sought for an entire document, unambiguous written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.**

(b) The motion, one (1) copy of the material **in paper medium** which is identified by underscoring or highlighting, and ten (10) copies of the material **in paper medium** with those portions obscured for which confidentiality is sought, shall be filed with the commission. **If confidential treatment is sought for an entire document, the filer may file a sheet noting that the entire document is confidential in lieu of redacting the document.**

(c) The motion and one (1) copy of the material **in paper medium**, with only those portions for which confidentiality is sought ***redacted[~~obscured~~]***, shall be served on all parties. The motion shall contain a certificate of service on all parties.

(d) The burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.878 **and to demonstrate the time period for which the material should be considered as confidential** shall be upon the party requesting confidential treatment.

(e) ***A[~~Any~~]*** party may respond to a motion for confidential treatment within seven (7) days after it is filed with the commission.

(f) If the case is being conducted using electronic filing procedures ***established[~~set forth~~]*** in Section 8 of this administrative regulation, the parties shall comply with those procedures except that an unobscured copy of the material for which confidentiality is sought shall not be transmitted electronically.

(3) Procedure for determining confidentiality of material submitted outside of a ***case[~~formal proceeding~~]***.

(a) ***A person who requests[~~Any person requesting~~]*** confidential treatment of ***[~~any~~]***material filed with the commission outside of a case shall submit a written request to the executive director that:

1. ***Establishes[~~Sets forth~~]*** specific grounds upon which the material should be classified as confidential;

2. States the time period in which the material should be treated as confidential and the reasons for this time period; and

3. Includes, in a separate sealed envelope marked confidential,[~~and~~

~~2. Attaches~~] one (1) copy of the material **in paper medium** which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification. **If confidential treatment is sought for an entire document, unambiguous written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.**

(b) The written request, one (1) copy of the material **in paper medium** which is identified by underscoring or highlighting, and one (1) copy of the material **in paper medium** with those portions ***redacted[~~obscured~~]*** for which confidentiality is sought, shall be filed with the commission. **If confidential treatment is sought for an entire document, the filer may file a sheet noting that the entire document is confidential in lieu of redacting the document.**

(c) The burden of proof to show that the material falls within the exclusions from disclosure requirements ***established[~~set forth~~]*** in KRS 61.878 **and to demonstrate the time period for which the material should be considered as confidential** shall be upon the person requesting confidential treatment.

(d) The executive director, as official custodian of the commission's records, shall determine if the material falls within the exclusions from disclosure requirements ***established[~~set forth~~]*** in KRS 61.878 **and the time period for which the material should be considered as confidential** and shall advise the requestor of the determination by letter.

(e) A person whose request for confidential treatment is denied**, in whole or in part,** by the executive director may petition the commission for confidential treatment of the material in accordance with the procedures ***established[~~set forth~~]*** in subsection (2) of this section. The commission shall review the petition without regard to the executive director's determination.

(f) If the executive director denies a request for confidential treatment, the material for which confidential treatment was sought shall not be placed in the public record for twenty (20) days to allow the requesting party to petition the commission.

(4) Pending ***action by the commission on a motion for confidential treatment or by its executive director on a request[~~commission action on a request or motion~~]*** for confidential treatment, the material specifically identified shall be accorded confidential treatment.

(5) If the petition ***or motion[~~, motion, or request~~]*** for confidential treatment of material is denied, the material shall not be placed in the public record for **the period permitted pursuant to KRS 278.410 to bring an action for review[~~twenty (20) days to allow the petitioner to seek any remedy afforded by law~~]**.

(6) Procedure for ***a[~~any~~]*** party to request access to confidential material filed in ***a[~~any~~]*** proceeding.

(a) A party to ***a[~~any~~]*** proceeding before the commission shall not fail to respond to discovery by the commission or its staff or ***another[~~any other~~]*** party to the proceeding on grounds of confidentiality.

1. If a[~~If any~~] party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, ***the party[~~it~~]*** shall follow the procedures for petitioning for confidentiality ***established[~~contained~~]*** in this administrative regulation.

2. A[~~Any~~] party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought ***redacted[~~obscured~~]***.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then ***a[~~any~~]*** party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding.

1. The petition shall include a description of efforts to enter into a protective agreement and ***[~~any~~]***unwillingness**, *if applicable,*** to enter into a protective agreement shall be fully explained.

2. A[~~Any~~] party may respond to the petition within seven (7) days after it is filed with the commission.

3. The commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(7) Requests for access to records pursuant to KRS 61.870 to 61.884. A time period prescribed in this section shall not limit the right of ***a[~~any~~]*** person to request access to commission records pursuant to KRS 61.870 to 61.884. Upon a request filed pursuant

to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure ***established[prescribed]*** in KRS 61.880.

(8) Procedure for request for access to confidential material. ***A[Any]*** person denied access to records requested pursuant to KRS 61.870 to 61.884 or to material deemed confidential by the commission in accordance with the procedures ***established[set out]*** in this section, may obtain this information only pursuant to KRS 61.870 to 61.884 and other applicable law.

(9) Use of confidential material during formal proceedings.

(a) ***A[Any]*** party that files material that contains or reveals material that has previously been deemed confidential shall submit with the filed material:

1. A written notice identifying the date on which the confidentiality of the original material was determined and, if applicable, the case number in which the determination was made; and

2. One (1) copy of the filed material ***[which is]***identified by underscoring or highlighting, and ten (10) copies of the material with those portions ***redacted[obscured]*** for which confidentiality has previously been granted.

(b)***[Any]*** Material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the procedure established in this paragraph.

1. The party seeking to address the confidential material shall advise the commission prior to the use of the material.

2. ***A person[All persons]*** other than commission employees not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

3. Any portion of the record directly related to the confidential material shall be sealed.

(10) Material granted confidentiality ***that[which]*** later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) **Except as provided for in paragraphs (c) and (d) of this subsection, confidential[Unless the commission orders otherwise, confidential]** treatment shall be afforded to material for **the period specified in the commission's order or executive director's written decision.[no more than two (2) years.]** At the end of this period,**[the person who sought confidential treatment for the material shall request that the material continue to be treated as confidential and shall demonstrate that the material still falls within the exclusions from disclosure requirements set forth in KRS 61.878. Absent any showing, the material will be placed in the public record. If no request is made for continued confidential treatment,]** the material shall be placed in the public record without notice to the person who originally requested confidential treatment. **The person who sought confidential treatment for the material may request that the material continue to be treated as confidential but shall demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.**

(b) The petitioner who sought confidential protection shall inform the commission in writing ***if[at any time when any]*** material granted confidentiality becomes publicly available.

(c) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the petitioner who sought confidential protection, giving ten (10) days to respond. If ***[the commission finds]***that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, the information shall not be deemed or considered to be publicly available and shall not be placed in the public record.

(d) If a request to inspect material granted confidential treatment is made during the period specified in the commission's order or executive director's written decision, the commission shall notify in writing the person who originally sought confidential treatment for the material and direct him to demonstrate within twenty (20) days of his receipt of the notice that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If he is unable to make the demonstration, the commission shall make the requested materials available for public inspection. Otherwise, the commission shall deny the request for inspection.

(e)[(d)] The material shall not be placed in the public record for twenty (20) days following ***an[any]*** order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek ***a[any]*** remedy afforded by law.

Section 14. Applications. (1) Contents of application. ***Each application[All applications]*** shall be by petition. The petition shall ***establish[set forth]*** the full name, mailing address, and electronic mail address of the applicant, and shall contain fully the facts on which the application is based, with a request for the order, authorization, permission, or certificate desired and a reference to the particular law requiring or providing for same.

(2) Articles of incorporation.

(a) If the applicant is a corporation, a certified copy of its articles of incorporation and all amendments, if any, shall be annexed to the application, or a written statement attesting that its articles and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

(b) If the applicant is a limited liability company, a certified copy of its articles of organization and all amendments, if any, shall be annexed to the application, or a written statement attesting that its articles and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

(c) If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments, if any, shall be annexed to the application, or a written statement attesting that its partnership agreement and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

Section 15. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing the applicant to bid on a franchise, license, or permit offered by ***a[any]*** governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its articles of incorporation, partnership agreement, or articles of organization pursuant to Section 14(2) of this administrative regulation;

(b) The name of the governmental agency offering the franchise;

(c) The type of franchise offered; and

(d) A statement showing the need and demand for service. If the applicant is successful in acquiring the franchise, license**,** or permit, it shall file a copy with the commission.

(2) New construction or extension. ***Upon application[When application is made]*** by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property**,** or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit the following data, either in the application or as attached exhibits:

(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity;

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission;

(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete;

(d) Maps to suitable scale showing the location or route of the proposed new construction or extension, as well as the location to scale of ***[any]***like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities. The utility shall supply one (1) copy of each map

in an electronic format and one (1) copy of each map in a paper format;

(e) The manner in detail in which it is proposed to finance the new construction or extension;

(f) An estimated **annual** cost of operation**[~~thirty (30) days~~]** after the proposed facilities are **placed into service[~~completed~~]**; and

(g) All other information necessary to afford the commission a complete understanding of the situation.

(3) Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property**,** or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. ***[~~Insofar~~]***As procedure is concerned, ***an application[~~applications~~]*** for a renewal of a certificate of convenience and necessity shall be treated as an original application.

Section 16. Applications for General Adjustments in Existing Rates. (1) ***Each application[~~All applications~~]*** requesting a general adjustment in existing rates shall:

(a) Be supported by:

1. A twelve (12) month historical test period ***that[~~which~~]*** may include adjustments for known and measurable changes; or

2. A fully forecasted test period; and

(b) Include:

1. A statement of the reason the adjustment is required;

2. If the utility is incorporated or is a limited partnership, a certificate of good standing or certificate of authorization dated within sixty (60) days of the date the application is filed;

3. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that a certificate is not necessary;

4.***[~~Any~~]*** New or revised tariff sheets***, if applicable in a format that[~~in a format which~~]*** complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

5.***[~~Any~~]*** New or revised tariff sheets***, if applicable,*** identified in compliance with 807 KAR 5:011, shown either by:

a. Providing the present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

b. Providing a copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

6. A statement that customer notice has been given in compliance with subsections (3) and (4) of this section with a copy of the notice. ***[~~7. For the purposes of this administrative regulation, an affiliate is an entity:~~***

[~~a. That is wholly owned by a utility;~~

[~~b. In which a utility has a controlling interest;~~

[~~c. That wholly owns a utility;~~

[~~d. That has a controlling interest in a utility; or~~

[~~e. That is under common control with the utility.~~

[~~8. For the purposes of this administrative regulation, a utility, or other entity, shall be deemed to have a controlling interest in, or be under common control with, an entity or utility if it:~~

[~~a. Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of any entity; and~~

[~~b. Exercises that power:~~

[~~(i) Through one (1) or more intermediary companies, or alone;~~

[~~(ii) In conjunction with, or pursuant to an agreement;~~

[~~(iii) Through ownership of ten (10) percent or more of the voting securities;~~

[~~(iv) Through common directors, officers, stockholders, voting or holding trusts, associated companies;~~

[~~(v) Contract; or~~

[~~(vi) Any other direct or indirect means.]~~

(2) Notice of intent. A utility with gross annual revenues greater than $5,000,000 shall notify the commission in writing of intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application.

(a) The notice of intent shall state ***if[~~whether~~]*** the rate application will be supported by a historical test period or a fully forecasted test period.

(b) Upon[~~When~~] filing the notice of intent, an application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon ***that[~~which~~]*** may be used to obtain a copy from the applicant of the full schedule of increases or rate changes.

(c) The applicant shall also transmit by electronic mail a copy of the notice in a portable document format to the Attorney General's Office of Rate Intervention at rateintervention@ag.ky.gov.

(3) Manner of notification.

(a) If the utility has twenty (20) or fewer customers or is a sewage utility, it shall:

1. Mail written notice to each customer no later than the date on which the application is filed with the commission. The notice shall meet the requirements ***established[~~set forth~~]*** in subsection (4) of this section;

2. Post at its place of business no later than the filed date of the application a sheet containing the information provided in the written notice to its customers; and

3. Keep the notice posted until the commission has issued a final decision on the application.

(b) An applicant that has more than twenty (20) customers and is not a sewage utility shall post at its place of business a sheet containing the information required by subsection (4) of this section and shall:

1. Include notice with customer bills mailed by the date the application is filed;

2. Publish notice in a trade publication or newsletter going to all customers by the date the application is filed; or

3. Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made by the date the application is filed.

(c) Utilities providing service in multiple counties may use a combination of the notice methods listed in **paragraph (b) of this subsection.**

(d) Notice given pursuant to this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.[~~subsection (3)(b) of this section.~~]

(4) Notice Requirements. Each notice shall contain the following information:

(a) The present rates and proposed rates for each customer class to which the proposed rates will apply;

(b) The amount of the change requested in both dollar amounts and percentage change for customer classification to which the proposed rate change will apply;

(c) The amount of the average usage and the effect upon the average bill for each customer class to which the proposed rate change will apply, except for local exchange companies**,** which shall include the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(d) A statement that the rates contained in this notice are the rates proposed by (name of utility) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(e) A statement that ***a[~~any~~]*** corporation, association, or person may within thirty (30) days after the initial publication or mailing of notice of the proposed rate changes, submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602 that ***establishes[~~sets forth~~]*** the grounds for the request including the status and interest of the party, and states that intervention may be granted beyond the thirty (30) day period for good cause shown;

(f) A statement that written comments regarding the proposed rate may be submitted to the Public Service Commission by mail or through the Public Service Commission's Web site;

(g)[~~(f)~~] A statement that ***a[any]*** person may examine this filing and any other documents the utility has filed with the Public Service Commission at the offices of (the name of the utility) located at (the utility's address) and on the utility's Web site at (the utility's Web site address), if the utility maintains a public Web site; and

(h)[~~(g)~~] A statement that this filing and any other related documents can be found on the Public Service Commission's Web site at http://psc.ky.gov/.

(5) Proof of notice. An applicant shall file with the commission no later than forty-five (45) days from the date of the initial filing:

(a) If its notice is published, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;

(b) If its notice is published in a trade publication or newsletter going to all customers, an affidavit from an authorized representative of the utility verifying the trade publication or newsletter was mailed; or

(c) If the notice is mailed, an affidavit from an authorized representative of the utility verifying the notice was mailed.

(6) Additional notice requirements. In addition to the notice requirements ***established[~~listed~~]*** in subsection (4) of this section:

(a) A utility shall post a sample copy of the required notification at its place of business no later than the date on which the application is filed and shall not remove the notification until issuance of a final order from the commission establishing the utility's approved rates; and

(b) A utility that maintains a public web site shall, within seven (7) days of filing an application, post a copy of the public notice as well as a hyperlink to its filed application on the commission's Web site and shall not remove the notification until issuance of a final order from the commission establishing the utility's approved rates.

(7) Abbreviated form of notice. Upon written request, the commission may grant a utility permission to use an abbreviated form of published notice of the proposed rates***,*** provided the notice includes a coupon ***that[~~which~~]*** may be used to obtain all of the required information.

(8) Notice of hearing scheduled by the commission upon application by a utility for a general adjustment in rates shall be advertised by the utility by newspaper publication in the areas that will be affected in compliance with KRS 424.300.

(9) ***Each application[~~All applications~~]*** supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and quantified explanation for all proposed adjustments with proper support for ***[~~any~~]***proposed changes in price or activity levels***, if applicable***, and ***[~~any~~]***other factors ***that[~~which~~]*** may affect the adjustment;

(b) If the utility has gross annual revenues greater than $5,000,000, the prepared testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than $5,000,000, the prepared testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit ***[~~any~~]***prepared testimony;

(d) A statement estimating the effect that each new rate will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;

(e) If the utility provides electric, gas, water, or sewer service, the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is an incumbent local exchange company, the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) A detailed analysis of customers' bills whereby revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;

(i) A reconciliation of the rate base and capital used to determine its revenue requirements;

(j) A current chart of accounts if more detailed than the Uniform System of Accounts prescribed by the commission;

(k) The independent auditor's annual opinion report, with ***[~~any~~]***written communication from the independent auditor to the utility***, if applicable,*** which indicates the existence of a material weakness in the utility's internal controls;

(l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;

(m) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Public Service Commission Form T (telephone);

(n) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number**[~~and style~~]** shall be sufficient;

(o) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; ***and*** the specifications for the computer hardware and the operating system required to run the program;

(p) Prospectuses of the most recent stock or bond offerings;

(q) Annual report to shareholders, or members, and statistical supplements covering the two (2) most recent years from the utility's application filing date;

(r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;

(s) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters updated as current information becomes available;

(t) If the utility had ***[~~any~~]***amounts charged or allocated to it by an affiliate or general or home office or paid ***[~~any~~]***monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;

2. An explanation of how the allocator for the test period was determined; and

3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;

(u) If the utility provides gas, electric, water, or sewage utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(v) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with ***47 C.F.R.*** Part 36***[~~of the Federal Communications Commission's rules and regulations~~]***; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000, except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(10) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just***,*** and reasonable rates based on the historical test period. The following information shall be filed with ***each application[~~applications~~]*** requesting pro forma adjustments or a state-

ment explaining why the required information does not exist and is not applicable to the utility's application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions, provide the following information:

1. The starting date of the construction of each major component of plant;

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

4. The amount contained in construction work in progress at the end of the test period;

5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost ***and the[,]*** cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;

7. An explanation of ***[any]***differences***, if applicable,*** in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments; and

(e) The number of customers to be added to the test period end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

(11) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the requirements established in this subsection.

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless the revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(12) ***Each application[All applications]*** requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The prepared testimony of each witness the utility proposes to use to support its application***,*** which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at a minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in prefiled testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period***,*** and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations***,*** which shall provide:

1. That the forecast is reasonable, reliable, made in good faith***,*** and that all basic assumptions used in the forecast have been identified and justified;

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for ***[any]***differences that exist***, if applicable***; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project ***that[which]*** constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast, the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

(g) For all construction projects ***that[which]*** constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement (exclusive of dividends per share or earnings per share);

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;

10. Labor cost changes;

11. Capital structure requirements;

12. Rate base;

13. Gallons of water projected to be sold (water);

14. Customer forecast (gas, water);

15. ***Sales volume forecasts – cubic feet[MCF sales forecasts]*** (gas);

16. Toll and access forecast of number of calls and number of minutes (telephone); and

17. A detailed explanation of ***[any]***other information provided***, if applicable***;

(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;

(j) The prospectuses of the most recent stock or bond offerings;

(k) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Public Service Commission Form T (telephone);

(l) The annual report to shareholders or members and the statistical supplements covering the most recent two (2) years from the application filing date;

(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart prescribed by the commission;

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent

months, as they become available;

(p) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, and any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters;

(q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility ***that[which]*** indicates the existence of a material weakness in the utility's internal controls;

(r) The quarterly reports to the stockholders for the most recent five (5) quarters;

(s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number**[and style]** shall be sufficient;

(t) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(u) If the utility had ***[any]***amounts charged or allocated to it by an affiliate or a general or home office or paid ***[any]***monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;

2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;

3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and

4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated**,** or paid during the base period is reasonable;

(v) If the utility provides gas, electric, sewage utility, or water utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(w) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with ***47 C.F.R.*** Part 36***[of the Federal Communications Commission's rules and regulations]***; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(13) ***Each application[All applications]*** seeking a general adjustment in rates supported by a forecasted test period shall include the following data:

(a) A jurisdictional financial summary for both the base period and the forecasted period ***that[which]*** details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules**,** which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules**,** which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules**,** which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(14) The commission shall notify the utility of ***[any]***deficiencies**, if applicable,** in the application within thirty (30) days of receiving it. For the application to be considered filed with the commission, the utility shall cure ***[any]***deficiencies within thirty (30) days of the commission giving notice of ***[any]***deficiencies.

(15) A request for waiver of ***[any of the]***provisions of these filing requirements shall ***establish[set forth]*** the specific reasons for the request. The commission shall grant the request for waiver upon good cause shown by the utility. In determining ***if[whether]*** good cause has been shown, the commission ***shall[may]*** consider:

(a) ***If[Whether]*** other information ***that[which]*** the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) ***If[Whether]*** the information ***that[which]*** is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information ***that[which]*** it maintains; and

(c) The expense to the utility in providing the information ***that[which]*** is the subject of the waiver request.

Section 17. Application for Authority to Issue Securities, Notes, Bonds, Stocks**,** or Other Evidences of Indebtedness. (1) ***Upon[When]*** application ***[is made]***by the utility for an order authorizing the issuance of securities, notes, bonds, stocks**,** or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, ***pursuant to[under]*** the provisions of KRS 278.300, the application, in addition to complying with the requirements of Section 14 of this administrative regulation, shall contain:

(a) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant***[,]*** If it is impossible to state the original cost, the facts creating the impossibility shall be stated;

(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the prefer-

ence; the amount of notes, bonds, or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest, and ***if[whether]*** and how to be secured;

(c) The use to be made of the proceeds of the issue of ***[any]***securities, notes, bonds, stocks, or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement of service, the maintenance of service, and the discharge or refunding of obligations;

(d) The property in detail ***that[which]*** is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities ***established[set forth]*** in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. ***If a contract has[Whether any contracts have]*** been made for the acquisition of ***[any]***property, or for ***[any]***construction, completion, extension, or improvement of facilities, or for the disposition ***[of any]***of the securities, notes, bonds, stocks, or other evidence of indebtedness ***that[which]*** it proposes to issue or the proceeds thereof and if ***a contract has[any contracts have]*** been made, copies thereof shall be annexed to the petition;

(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, the petition shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and

(f)***[Any]*** Other facts ***[as may be]***pertinent to the application.

(2) The following exhibits shall be filed with the application:

(a) Financial exhibit (see Section 12 of this administrative regulation);

(b) Copies of trust deeds or mortgages, if ***applicable[any]***, unless they have already been filed with the commission, in which case reference shall be made **by[, by style and]** case number**[,]** to the proceeding in which the trust deeds or mortgages have been filed; and

(c) Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division. Estimates shall be arranged according to the ***commission-prescribed uniform system of accounts[uniform system of accounts prescribed by the commission]*** for the various classes of utilities.

Section 18. **Application[Petition]** for Declaratory Order. (1) The commission may, upon application by ***a[any]*** person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to ***a[any]*** person, property, or state of facts of ***an[any]*** order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of ***an[any]*** order or administrative regulation of the commission or provision of KRS Chapter 278.

(2) An application for declaratory order shall:

(a) Be in writing;

(b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;

(c) Fully disclose the applicant's interest;

(d) Identify all statutes, administrative regulations, and orders to which the application relates***[order or administrative regulation]***; and

(e) State the applicant's proposed resolution or conclusion.

(3) The commission may ***[in its discretion]***direct that a copy of the application for a declaratory order be served on ***a person who[any person the commission deems]*** may be affected by the application.

(4) Responses, if ***applicable[any]***, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission ***and shall[or within the time the commission directs; and]*** be served upon the applicant.

(5) ***A reply to a response shall[Replies to responses may]*** be filed with the commission within fourteen (14) days after service***[, or within the time the commission directs]***.

(6) ***Each application, response, and reply containing an allegation[All applications, responses and replies containing allegations]*** of fact shall be supported by affidavit or ***shall be*** verified.

(7) The commission may ***[in its sole discretion]***dispose of an application for a declaratory order solely on the basis of the written submissions filed***[before it]***.

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials.

Section 19. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall ***establish[set out]*** the names of the complainant and the name of the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant; and

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, ***if[where]*** practicable, to the law, order, or ***administrative regulation section and subsection[section, and subsections]***, of which a violation is claimed, and other matters, or facts, if any, as ***[may be]***necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall ***specifically establish the relief[set forth definitely the exact relief which is]*** desired.

(2) Signature. The complaint shall be signed by the complainant or his or her attorney, if ***applicable[any]***, and if signed by an attorney, shall show the attorney's post office address. ***A complaint by a corporation, association, or another organization with[Complaints by corporations or associations, or any other organization having]*** the right to file a complaint, shall be signed by ***the entity's[its]*** attorney.

(3) Number of copies required. When the complainant files his or her original complaint, the complainant shall also file two (2) more copies than the number of persons or corporations to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the same to ascertain ***if[whether]*** it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this administrative regulation, ***the commission[it]*** shall notify the complainant or his or her attorney to that effect, and opportunity ***shall[may]*** be given to amend the complaint within a specified time.

2. If the complaint is not ***[so]***amended within the time or the extension as the commission, for good cause shown, ***shall grant, the complaint[may grant, it]*** shall be dismissed.

(b) If the ***[commission is of the opinion that the]***complaint, either as originally filed or as amended, ***establishes[does establish]*** a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon ***the[any]*** person complained of***[under the hand of its executive director and attested by its seal]***, accompanied by a copy of the complaint, directed to the person ***complained of*** and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may, in particular cases, require the answer to be filed within a shorter **or longer period[time]**.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which the defendant is willing to give. Upon the acceptance of this offer by the complainant and ***with*** the approval of the commission, further proceedings shall not be taken.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the person complained of shall file an answer to the complaint, with certificate of service on other endorsed parties, within the time specified in the order or the extension as the commission, for good cause shown, ***shall grant.***

(a)[may grant.] The answer shall contain a specific denial of

the material allegations of the complaint as controverted by the defendant and also a statement of ***[any]***new matter constituting a defense.

(b) If the answering party ***does not have information[~~has no information or belief upon the subject~~]*** sufficient to enable him or her to answer an allegation of the complaint, the answering party may so state in the answer and place the denial upon that ground.

Section 20. Informal Complaints. (1) ***An informal complaint[~~Informal complaints~~]*** shall be made to the commission's division of consumer services in ***a[~~any~~]*** manner that specifically states the complainant's concerns and identifies the utility.

(2) The commission's division of consumer services shall address by correspondence or other means the complaint. If an informal complaint is referred to a utility, the utility shall acknowledge to the commission's division of consumer services referral of the complaint and shall report on its efforts to contact the complainant within three (3) business days of the referral, or a lesser period as commission staff may require. If commission staff requires a period less than three (3) business days for a response, that period shall be reasonable under the circumstances.

(3) Upon resolution of the informal complaint, the utility shall notify the commission's division of consumer services.

(4) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding shall be held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings shall be discontinued.

Section 21. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 22. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "FERC Form-1", Annual Report of Major Electric Utilities, Licensees and Others, March 2007;

(b) "FERC Form-2", Annual Report of Major Natural Gas Companies, December 2007;

(c) "***[~~PSC~~]***Notice of ***Election of Use of*** Electronic Filing Procedures***[~~Form~~]***", July 2012;

(d) "PSC Form-T (telephone)", August 2005;

(e) "***Form 8-K", January 2012;***

(f) "Form 10-K", January 2012; and

(g) "Form 10-Q", January 2012.[~~SEC Form-8K", January 2012;~~

~~(f) "SEC Form-10K", January 2012; and~~

~~(g) "SEC Form-10Q", January 2012;~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov.[~~Section 1. General Offices and Hearings. (1) The commission will be in continuous session for the performance of administrative duties.~~

~~(2) Meetings of the commission for the consideration of all matters requiring formal hearings will be held on such days, at such hours and at such places as the commission may designate.~~

~~(3) Notice of hearing will be given by the secretary to parties to proceedings before the commission, except when a hearing is not concluded on the day appointed therefore and verbal announcement is made by the presiding commissioner or hearing examiner of an adjourned date. Verbal announcements so made shall be deemed due notice of continued hearing.~~

~~Section 2. Secretary to Furnish Information. (1) Upon request, the secretary will advise any party as to the form of a petition, complaint, answer, application or other paper desired to be filed; and he will make available from the commission's files, upon request, any document or record pertinent to any matter before the commission.~~

~~(2) The secretary may reject for filing any document which on its face does not comply with the rules and administrative regulations of the commission.~~

~~Section 3. General Matters Pertaining to All Formal Proceedings. (1) Address of the commission. All communications should be addressed to "Public Service Commission, Frankfort, Kentucky."~~

~~(2) Case numbers and styles. Each matter coming formally before the commission will be known as a case and will receive a number and style, descriptive of the subject matter. Such number and style shall be placed on all subsequent papers in such case.~~

~~(3) Form of papers filed. All pleadings and applications filed with the commission in formal proceedings shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double spaced.~~

~~(4) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by affidavit.~~

~~(5) Amendment. At its discretion, the commission may allow any complaint, application, answer or other paper to be amended or corrected or any omission supplied therein.~~

~~(6) Witnesses and subpoenas.~~

~~(a) Upon the application of any party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.~~

~~(b) Subpoenas for the production of books, accounts, papers or records (unless directed to issue by the commission on its own authority) will be issued only at the discretion of the commission, or any commissioner, upon application in writing, stating as nearly as possible the books, accounts, papers or records desired to be produced.~~

~~(7) Service of process. When any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.~~

~~(8) Intervention and parties. In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party.~~

~~(a) Each person granted leave to intervene shall be considered as making a limited intervention unless he submits to the secretary a written request for full intervention. A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he appears and shall be served with the commission's order, but he shall not be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review.~~

~~(b) If a person granted leave to intervene desires to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, he shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.~~

~~Section 4. Hearings and Rehearings. (1) When hearings will be granted. Except as otherwise determined in specific cases, the commission will grant a hearing in the following classes of cases:~~

~~(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the complaint to the satisfaction of the commission.~~

~~(b) When application has been made in a formal proceeding.~~

~~(2) Publication of notice. Upon the filing of any application the commission may, in its discretion, give all other corporations or persons who may be affected thereby an opportunity to be heard~~

~~by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of the applicant, for such length of time and in such newspaper or newspapers as the commission may designate. In such cases the form of notice will be prepared by the secretary, and a proof of the publication thereof must be filed at or before the hearing.~~

~~(3) Investigation on commission's own motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by the public utility, which the commission may believe is in violation of any provision of law or of any order or administrative regulation of the commission. It may also through its own experts or employees, or otherwise, obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.~~

~~(4) Conferences with commission staff. In order to provide opportunity for settlement of a proceeding or any of the issues therein, an informal conference with the commission staff may be arranged through the secretary of the commission either prior to, or during the course of hearings in any proceeding, at the request of any party.~~

~~(5) Conduct of hearings. Hearings will be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.~~

~~(6) Stipulation of facts. By a stipulation in writing, filed with the secretary, the parties to any proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.~~

~~(7) Testimony. All testimony given before the commission will be given under oath or affirmation.~~

~~(8) Objections and exceptions. When objections are made to the admission or exclusion of evidence before the commission, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and will not be taken to rulings therein.~~

~~(9) Transcript of evidence. The commission will cause to be made a stenographic record of all public hearings and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of the fees fixed therefore.~~

~~(10) Briefs and petitions for rehearing. All briefs and petitions for rehearing in any proceeding must be accompanied with notice, showing service upon all other parties or their attorneys, and, in addition to the filed original, ten (10) copies of each such document shall be furnished for the use of the commission.~~

~~(11) Filing of briefs. All briefs must be filed within the time fixed, and the commission may refuse to consider any brief filed thereafter. Applications for extensions of time to file briefs must be made to the commission in writing.~~

~~(12) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.~~

~~Section 5. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as a part of the record.~~

~~(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant the party must plainly designate the matter so offered. If such immaterial matter unnecessarily encumbers the record, such book, paper or document will not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine such book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.~~

~~(3) Whenever practicable the sheets of each exhibit and the lines of each sheet shall be numbered and if the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Wherever practicable, rate comparisons and other such evidence shall be condensed into tables.~~

~~(4) Except as may be expressly permitted in particular instances, the commission will not receive in evidence or consider as a part of the record any book, paper or other document for consideration in connection with the proceeding after the close of the testimony.~~

~~(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission, at the discretion of the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record will not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part of any document may be made a part of the record before such court, at the instance of any party.~~

~~Section 6. Financial Exhibit. Whenever in these rules it is provided that a financial exhibit shall be annexed to the application, the said exhibit shall cover operations for a twelve (12) month period, said period ending not more than ninety (90) days prior to the date the application is filed. The said exhibit shall disclose the following information in the order indicated below:~~

~~(1) Amount and kinds of stock authorized.~~

~~(2) Amount and kinds of stock issued and outstanding.~~

~~(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise.~~

~~(4) Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of indebtedness actually secured, together with any sinking fund provisions.~~

~~(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.~~

~~(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.~~

~~(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.~~

~~(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year.~~

~~(9) Detailed income statement and balance sheet.~~

~~Section 7. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential as provided herein.~~

~~(2) Procedure for determining confidentiality.~~

~~(a) Any person requesting confidential treatment of any material shall file a petition which:~~

~~1. Sets forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential; and~~

~~2. Attaches one (1) copy of the material which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless deleted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification.~~

~~(b) The petition, one (1) copy of the material which is identified by underscoring or highlighting, and ten (10) copies of the material with those portions obscured for which confidentiality is sought, shall be filed with the commission.~~

~~(c) The petition and a copy of the material, with only those portions for which confidentiality is sought obscured, shall be served on all parties. The petition shall contain a certificate of service on all parties.~~

~~(d) The burden of proof to show that the material falls within~~

~~the exclusions from disclosure requirements enumerated in KRS 61.870 et seq., shall be upon the person requesting confidential treatment.~~

~~(e) Any person may respond to the petition for confidential treatment within ten (10) days after it is filed with the commission.~~

~~(3) Pending commission action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.~~

~~(4) If the commission denies the petition for confidential treatment of material, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to seek any remedy afforded by law.~~

~~(5) Procedure for any party to request access to confidential material filed in any proceeding.~~

~~(a) No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.~~

~~(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then any party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding. The petition shall include a description of efforts to enter into a protective agreement and any unwillingness to enter into a protective agreement shall be fully explained. Any party may respond to the petition within ten (10) days after it is filed with the commission. The commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.~~

~~(6) Requests for access to records pursuant to KRS 61.870-884. No time period prescribed in this section shall limit the right of any person to request access to commission records pursuant to KRS 61.870-884. Upon a request filed pursuant to KRS 61.870-884, the commission shall respond in accordance with the procedure prescribed in KRS 61.880.~~

~~(7) Procedure for request for access to confidential material. Any person denied access to records requested pursuant to KRS 61.870-884 or to material deemed confidential by the commission in accordance with the procedures set out in this section, may obtain this information only pursuant to KRS 61.870-884, and other applicable law.~~

~~(8) Use of confidential material during formal proceedings. Any material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the following procedure:~~

~~(a) The person seeking to address the confidential material shall advise the commission prior to the use of such material.~~

~~(b) All persons other than commission employees not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.~~

~~(c) The court reporter shall produce a sealed transcript of that portion of the record directly related to the confidential material.~~

~~(9) Material granted confidentiality which later becomes publicly available or otherwise no longer warrants confidential treatment.~~

~~(a) The petitioner who sought confidential protection shall inform the commission in writing at any time when any material granted confidentiality becomes publicly available.~~

~~(b) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the petitioner who sought confidential protection, giving ten (10) days to respond. If the commission finds that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, such information shall not be deemed or considered to be publicly available and shall not be placed in the public record.~~

~~(c) The material shall not be placed in the public record for twenty (20) days following any order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.~~

~~Section 8. Applications. (1) Contents of application. All applications must be by petition in writing. The petition must set forth the full name and post office address of the applicant, and must contain fully the facts on which the application is based, with a request for the order, authorization, permission or certificate desired and a reference to the particular provision of law requiring or providing for same.~~

~~(2) Number of copies. At the time the original application is filed, ten (10) additional copies must also be filed, and where parties interested in the subject matter of the application are named therein, there shall be filed an additional copy for each named party and such other additional copies as may be required by the secretary.~~

~~(3) Articles of incorporation. If the applicant is a corporation, a certified copy of its articles of incorporation, and all amendments thereto, if any, shall be annexed to the application. If applicant's articles of incorporation and amendments thereto, if any, have already been filed with the commission in some prior proceeding, it will be sufficient if this fact is stated in the application and reference is made to the style and case number of the prior proceeding.~~

~~Section 9. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing applicant to bid on a franchise, license or permit offered by any governmental agency, the applicant shall submit with its application, the following:~~

~~(a) A copy of its articles of incorporation (see Section 8(3) of this administrative regulation).~~

~~(b) The name of the governmental agency offering the franchise.~~

~~(c) The type of franchise offered.~~

~~(d) A statement showing the need and demand for service. Should the applicant be successful in acquiring said franchise, license or permit, it shall file a copy thereof with the commission.~~

~~(2) New construction or extension. When application is made by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property or facility, the applicant, in addition to complying with Section 8 of this administrative regulation, shall submit the following data, either in the application or as exhibits attached thereto:~~

~~(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity.~~

~~(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission.~~

~~(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete.~~

~~(d) Three (3) maps to suitable scale (preferably not more than two (2) miles per inch) showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of such other facilities.~~

~~(e) The manner in detail in which it is proposed to finance the new construction or extension.~~

~~(f) An estimated cost of operation after the proposed facilities are completed.~~

~~(g) All other information necessary to afford the commission a complete understanding of the situation.~~

~~(3) Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do~~

~~not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.~~

~~(4) Renewal applications. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity will be treated as an original application.~~

~~Section 10. Applications for General Adjustments in Existing Rates. (1) All applications requesting a general adjustment in existing rates shall be supported by:~~

~~(a) A twelve (12) month historical test period which may include adjustments for known and measurable changes; or~~

~~(b) A fully forecasted test period and shall include:~~

~~1. A statement of the reason the adjustment is required;~~

~~2. A statement that the utility's annual reports, including the annual report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1);~~

~~3. If the utility is incorporated, a certified copy of the utility's articles of incorporation and all amendments thereto or out-of-state documents of similar import. If the utility's articles of incorporation and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;~~

~~4. If the utility is a limited partnership, a certified copy of the limited partnership agreement and all amendments thereto or out-of-state documents of similar import. If the utility's limited partnership agreement and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;~~

~~5. If the utility is incorporated or is a limited partnership, a certificate of good standing or certificate of authorization dated within sixty (60) days of the date the application is filed;~~

~~6. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that such a certificate is not necessary;~~

~~7. The proposed tariff in a form which complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;~~

~~8. The utility's proposed tariff changes, identified in compliance with 807 KAR 5:011, shown either by:~~

~~a. Providing the present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or~~

~~b. Providing a copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and~~

~~9. A statement that customer notice has been given in compliance with subsections (3) and (4) of this section with a copy of the notice.~~

~~10. For the purposes of this administrative regulation, an affiliate is an entity that:~~

~~a. Is wholly owned by a utility; or~~

~~b. In which a utility has a controlling interest; or~~

~~c. That wholly owns a utility; or~~

~~d. That has a controlling interest in a utility; or~~

~~e. That is under common control with the utility.~~

~~11. For the purposes of this administrative regulation, a utility, or other entity, shall be deemed to have a controlling interest in, or be under common control with, an entity or utility if it:~~

~~a. Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of any entity; and~~

~~b. Exercises such power:~~

~~(i) Through one (1) or more intermediary companies, or alone; or~~

~~(ii) In conjunction with, or pursuant to an agreement; or~~

~~(iii) Through ownership of ten (10) percent or more of the voting securities; or~~

~~(iv) Through common directors, officers, stockholders, voting or holding trusts, associated companies; or~~

~~(v) Contract; or~~

~~(vi) Any other direct or indirect means.~~

~~(2) Notice of intent. Utilities with gross annual revenues greater than $1,000,000 shall file with the commission a written notice of intent to file a rate application at least four (4) weeks prior to filing their application. The notice of intent shall state whether the rate application will be supported by a historical test period or a fully forecasted test period. This notice shall be served upon the Attorney General, Utility Intervention and Rate Division.~~

~~(3) Form of notice to customers. Every utility filing an application pursuant to this section shall notify all affected customers in the manner prescribed herein. The notice shall include the following information:~~

~~(a) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;~~

~~(b) The present rates and the proposed rates for each customer class to which the proposed rates would apply;~~

~~(c) Electric, gas, water and sewer utilities shall include the effect upon the average bill for each customer class to which the proposed rate change will apply;~~

~~(d) Local exchange companies shall include the effect upon the average bill for each customer class for the proposed rate change in basic local service;~~

~~(e) A statement that the rates contained in this notice are the rates proposed by (name of utility); however, the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;~~

~~(f) A statement that any corporation, association, or person with a substantial interest in the matter may, by written request, within thirty (30) days after publication or mailing of this notice of the proposed rate changes request to intervene; intervention may be granted beyond the thirty (30) day period for good cause shown;~~

~~(g) A statement that any person who has been granted intervention by the commission may obtain copies of the rate application and any other filings made by the utility by contacting the utility through a name and address and phone number stated in this notice;~~

~~(h) A statement that any person may examine the rate application and any other filings made by the utility at the main office of the utility or at the commission's office indicating the addresses and telephone numbers of both the utility and the commission; and~~

~~(i) The commission may grant a utility with annual gross revenues greater than $1,000,000, upon written request, permission to use an abbreviated form of published notice of the proposed rates provided the notice includes a coupon which may be used to obtain all of the information required herein.~~

~~(4) Manner of notification.~~

~~(a) Sewer utilities shall give the required typewritten notice by mail to all of their customers pursuant to KRS 278.185.~~

~~(b) Applicants with twenty (20) or fewer customers affected by the proposed general rate adjustment shall mail the required typewritten notice to each customer no later than the date the application is filed with the commission.~~

~~(c) Except for sewer utilities, applicants with more than twenty (20) customers affected by the proposed general rate adjustment shall give the required notice by one (1) of the following methods:~~

~~1. A typewritten notice mailed to all customers no later than the date the application is filed with the commission;~~

~~2. Publishing the notice in a trade publication or newsletter which is mailed to all customers no later than the date on which the application is filed with the commission; or~~

~~3. Publishing the notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made within seven (7) days of the filing of the application with the commission.~~

~~(d) If the notice is published, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice, shall be filed with the commission no later than forty-five (45) days of the filed date of the application.~~

~~(e) If the notice is mailed, a written statement signed by the utility's chief officer in charge of Kentucky operations verifying the notice was mailed shall be filed with the commission no later than thirty (30) days of the filed date of the application.~~

~~(f) All utilities, in addition to the above notification, shall post a sample copy of the required notification at their place of business no later than the date on which the application is filed which shall~~

~~remain posted until the commission has finally determined the utility's rates.~~

~~(g) Compliance with this subsection shall constitute compliance with 807 KAR 5:051, Section 2.~~

~~(5) Notice of hearing scheduled by the commission upon application by a utility for a general adjustment in rates shall be advertised by the utility by newspaper publication in the areas that will be affected in compliance with KRS 424.300.~~

~~(6) All applications supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:~~

~~(a) A complete description and quantified explanation for all proposed adjustments with proper support for any proposed changes in price or activity levels, and any other factors which may affect the adjustment;~~

~~(b) If the utility has gross annual revenues greater than $1,000,000, the prepared testimony of each witness the utility proposes to use to support its application;~~

~~(c) If the utility has gross annual revenues less than $1,000,000, the prepared testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit any prepared testimony;~~

~~(d) A statement estimating the effect that the new rate(s) will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;~~

~~(e) If the utility provides electric, gas, water or sewer service the effect upon the average bill for each customer classification to which the proposed rate change will apply;~~

~~(f) If the utility is a local exchange company the effect upon the average bill for each customer class for the proposed rate change in basic local service;~~

~~(g) An analysis of customers' bills in such detail that revenues from the present and proposed rates can be readily determined for each customer class;~~

~~(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;~~

~~(i) A reconciliation of the rate base and capital used to determine its revenue requirements;~~

~~(j) A current chart of accounts if more detailed than the Uniform System of Accounts prescribed by the commission;~~

~~(k) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;~~

~~(l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;~~

~~(m) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Automated Reporting Management Information System Report (telephone) and Public Service Commission Form T (telephone);~~

~~(n) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case a reference to that case's number and style will be sufficient;~~

~~(o) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;~~

~~(p) Prospectuses of the most recent stock or bond offerings;~~

~~(q) Annual report to shareholders, or members, and statistical supplements covering the two (2) most recent years from the utility's application filing date;~~

~~(r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;~~

~~(s) Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued within the past two (2) years, and Form 10-Qs issued during the past six (6) quarters updated as current information becomes available;~~

~~(t) If the utility had any amounts charged or allocated to it by an affiliate or general or home office or paid any monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:~~

~~1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;~~

~~2. An explanation of how the allocator for the test period was determined; and~~

~~3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated or paid during the test period was reasonable;~~

~~(u) If the utility provides gas, electric or water utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and~~

~~(v) Local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:~~

~~1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and~~

~~2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000, except local exchange access:~~

~~a. Based on current and reliable data from a single time period; and~~

~~b. Using generally recognized fully allocated, embedded, or incremental cost principles.~~

~~(7) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just and reasonable rates based on the historical test period. The following information shall be filed with applications requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:~~

~~(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;~~

~~(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;~~

~~(c) For each proposed pro forma adjustment reflecting plant additions provide the following information:~~

~~1. The starting date of the construction of each major component of plant;~~

~~2. The proposed in-service date;~~

~~3. The total estimated cost of construction at completion;~~

~~4. The amount contained in construction work in progress at the end of the test period;~~

~~5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;~~

~~6. The original cost, cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;~~

~~7. An explanation of any differences in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and~~

~~8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;~~

~~(d) The operating budget for each month of the period encompassing the pro forma adjustments;~~

~~(e) The number of customers to be added to the test period -~~

~~end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.~~

~~(8) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the following requirements:~~

~~(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.~~

~~(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.~~

~~(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.~~

~~(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless such revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.~~

~~(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.~~

~~(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.~~

~~(9) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:~~

~~(a) The prepared testimony of each witness the utility proposes to use to support its application which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;~~

~~(b) The utility's most recent capital construction budget containing at minimum a three (3) year forecast of construction expenditures;~~

~~(c) A complete description, which may be filed in prefiled testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;~~

~~(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period and forecasted period;~~

~~(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations which shall provide:~~

~~1. That the forecast is reasonable, reliable, made in good faith and that all basic assumptions used in the forecast have been identified and justified; and~~

~~2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for any differences that exist; and~~

~~3. That productivity and efficiency gains are included in the forecast;~~

~~(f) For each major construction project which constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast the following information shall be filed:~~

~~1. The date the project was started or estimated starting date;~~

~~2. The estimated completion date;~~

~~3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and~~

~~4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;~~

~~(g) For all construction projects which constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;~~

~~(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:~~

~~1. Operating income statement (exclusive of dividends per share or earnings per share);~~

~~2. Balance sheet;~~

~~3. Statement of cash flows;~~

~~4. Revenue requirements necessary to support the forecasted rate of return;~~

~~5. Load forecast including energy and demand (electric);~~

~~6. Access line forecast (telephone);~~

~~7. Mix of generation (electric);~~

~~8. Mix of gas supply (gas);~~

~~9. Employee level;~~

~~10. Labor cost changes;~~

~~11. Capital structure requirements;~~

~~12. Rate base;~~

~~13. Gallons of water projected to be sold (water);~~

~~14. Customer forecast (gas, water);~~

~~15. MCF sales forecasts (gas);~~

~~16. Toll and access forecast of number of calls and number of minutes (telephone); and~~

~~17. A detailed explanation of any other information provided;~~

~~(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;~~

~~(j) The prospectuses of the most recent stock or bond offerings;~~

~~(k) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or the Automated Reporting Management Information System Report (telephone) and Public Service Commission Form T (telephone);~~

~~(l) The annual report to shareholders or members and the statistical supplements covering the most recent five (5) years from the application filing date;~~

~~(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart prescribed by the commission;~~

~~(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;~~

~~(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;~~

~~(p) The Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued during the prior two (2) years and any Form 10-Qs issued during the past six (6) quarters;~~

~~(q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;~~

~~(r) The quarterly reports to the stockholders for the most recent five (5) quarters;~~

~~(s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case a reference to that case's number and style will be sufficient;~~

~~(t) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;~~

~~(u) If the utility had any amounts charged or allocated to it by an affiliate or a general or home office or paid any monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:~~

~~1. A detailed description of the method and amounts allocated~~

~~or charged to the utility by the affiliate or general or home office for each allocation or payment;~~

~~2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;~~

~~3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and~~

~~4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated or paid during the base period is reasonable;~~

~~(v) If the utility provides gas, electric or water utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and~~

~~(w) Local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:~~

~~1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and~~

~~2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:~~

~~a. Based on current and reliable data from a single time period; and~~

~~b. Using generally recognized fully allocated, embedded, or incremental cost principles.~~

~~(10) All applications seeking a general adjustment in rates supported by a forecasted test period shall include the following data to be submitted using schedule forms hereby incorporated by reference and which may be inspected, copied or obtained at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday between the hours of 8 a.m. and 4:30 p.m., local time. The commission shall notify the utility of any deficiencies in the application within thirty (30) days of receiving it. The utility may cure such filing deficiencies within thirty (30) days' written notice from the commission.~~

~~(a) A jurisdictional financial summary for both the base period and the forecasted period which details how the utility derived the amount of the requested revenue increase;~~

~~(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules which include detailed analyses of each component of the rate base;~~

~~(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules which provide breakdowns by major account group and by individual account;~~

~~(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;~~

~~(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;~~

~~(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;~~

~~(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;~~

~~(h) A computation of the gross revenue conversion factor for the forecasted period;~~

~~(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;~~

~~(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;~~

~~(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;~~

~~(l) A narrative description and explanation of all proposed tariff changes;~~

~~(m) A revenue summary for both the base period and forecasted period with supporting schedules which provide detailed billing analyses for all customer classes; and~~

~~(n) A typical bill comparison under present and proposed rates for all customer classes.~~

~~(11) A request for waiver of any of the provisions of these filing requirements must set forth the specific reasons for the request. The commission shall grant the request for waiver upon good cause shown by the utility. In determining whether good cause has been shown, the commission may consider:~~

~~(a) Whether other information which the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;~~

~~(b) Whether the information which is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information which it maintains; and~~

~~(c) The expense to the utility in providing the information which is the subject of the waiver request.~~

~~Section 11. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, said application, in addition to complying with the requirements of Section 8 of this administrative regulation, shall contain:~~

~~(a) A general description of applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant, if it is impossible to state the original cost, the facts creating such impossibility shall be stated.~~

~~(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and whether and how to be secured.~~

~~(c) The use to be made of the proceeds of the issue of such securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service and the discharge or refunding of obligations.~~

~~(d) The property in detail which is to be acquired, constructed, improved or extended with its cost, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition.~~

~~(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of such obligations including their par value, the amount for which they were actually sold, the expenses associated therewith, and the application of the proceeds from such sales. If notes are to be refunded, the petition must show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended.~~

~~(f) Such other facts as may be pertinent to the application.~~

~~(2) The following exhibits must be filed with the application:~~

~~(a) Financial exhibit (see Section 6 of this administrative regulation).~~

~~(b) Copies of trust deeds or mortgages, if any, unless they~~

~~have already been filed with the commission, in which case reference should be made, by style and case number, to the proceeding in which the trust deeds or mortgages have been filed.~~

~~(c) Maps and plans of the proposed property and constructions together with detailed estimates in such form that they can be checked over by the commission's engineering division. Estimates must be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.~~

~~Section 12. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state:~~

~~(a) The full name and post office address of the complainant.~~

~~(b) The full name and post office address of the defendant.~~

~~(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired (see Section 15(1) of this administrative regulation).~~

~~(2) Signature. The complaint shall be signed by the complainant or his attorney, if any, and if signed by such attorney, shall show his post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.~~

~~(3) Number of copies required. At the time the complainant files his original complaint, he must also file copies thereof equal in number to ten (10) more than the number of persons or corporations to be served.~~

~~(4) Procedure on filing of complaint.~~

~~(a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this administrative regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this administrative regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.~~

~~(b) If the commission is of the opinion that such complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this administrative regulation, the commission will serve an order upon such corporations or persons complained of under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of such order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.~~

~~(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which he is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, no further proceedings need be taken.~~

~~(6) Answer to complaint. If satisfaction be not made as aforesaid, the corporation or person complained of must file an answer to the complaint, with certificate of service on other parties endorsed thereon, within the time specified in the order or such extension thereof as the commission, for good cause shown, may grant. The answer must contain a specific denial of such material allegations of the complaint as controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground (see Section 15(2) of this administrative regulation).~~

~~Section 13. Informal Complaints. (1) Informal complaints must be made in writing. Matters thus presented are, if their nature warrants, taken up by correspondence with the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.~~

~~(2) No form of informal complaint is prescribed, but in substance it must contain the essential elements of a complaint, including the name and address of complainant, the correct name and post office address of the utility against whom complaint is made, a clear and concise statement of the facts involved, and the relief requested.~~

~~(3) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding is held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings will be discontinued.~~

~~Section 14. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.~~

~~Section 15. Forms. (1) In all practice before the commission the following forms shall be followed insofar as practicable:~~

~~(a) Formal complaint.~~

~~(b) Answer.~~

~~(c) Application.~~

~~(d) Notice of adjustment of rates.~~

~~(2) Forms of formal complaint.~~

~~Before the Public Service Commission~~

~~(Insert name of complainant))~~

~~Complainant)~~

~~) No. _____~~

~~vs.) (To be inserted by the~~

~~) secretary)~~

~~(Insert name of each defendant))~~

~~Defendant)~~

~~COMPLAINT~~

~~The complaint of (here insert full name of each complainant) respectfully shows:~~

~~(a) That (here state name, occupation and post office address of each complainant).~~

~~(b) That (here insert full name, occupation and post office address of each defendant).~~

~~(c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed).~~

~~WHEREFORE, complainant asks (here state specifically the relief desired).~~

~~Dated at _____, Kentucky, this _____ day of _____, 19_____~~

~~(Name of each complainant)~~

~~Name and address of attorney, if any)~~

~~(3) Form of answer to formal complaint.~~

~~Before the Public Service Commission~~

~~(Insert name of complainant))~~

~~COMPLAINANT)~~

~~) No. _____~~

~~vs.) (To be inserted by the~~

~~) secretary)~~

~~(Insert name of each defendant))~~

~~DEFENDANT)~~

~~ANSWER~~

~~The above-named defendant, for answer to the complaint in the proceeding, respectfully states:~~

~~That (here follow specific denials of such material, allegations as are controverted by the defendant and also a statement of any new matter constituting a defense. Continue lettering each succeeding paragraph).~~

~~WHEREFORE, the defendant prays that the complaint be dismissed (or other appropriate prayer).~~

~~(Name of defendant)~~

~~(Name and address of attorney, if any)~~

~~(4) Form of application.~~
~~Before the Public Service Commission~~
~~In the matter of the application of)~~
~~(here insert name of each)~~
~~applicant) for (here insert desired) No. _____~~
~~order, authorization, permission) (To be inserted by the~~
~~or certificate, thus: "Order) secretary)~~
~~authorizing issue of stocks)~~
~~and bonds))~~

~~APPLICATION~~
~~The petition of (here insert name of each applicant) respectfully shows:~~
~~(a) That applicant is engaged in the business of (here insert nature of business and territorial extent thereof).~~
~~(b) That the post office address of each applicant is _____.~~
~~(c) That (here state fully and clearly the facts required by these rules, and any additional facts which applicant desires to state).~~
~~WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order authorizing applicant to (here state specifically the action which the applicant desires the commission to take).~~
~~Dated at _____, Kentucky, this _____ day of _____,19___.~~
~~(Name of applicant)~~
~~(Name and address of attorney, if any)~~
~~(5) Form of notice to the commission of adjustment of rates.~~
~~Before the Public Service Commission~~
~~In the matter of adjustment) No._____~~
~~of rate of the (state name) (To be inserted by the~~
~~of corporation).) the secretary)~~
~~The (here insert name of company) informs the commission that it is engaged in the business of (set out character of business) in (set out place of operation) and does hereby propose to adjust its rates, effective the _____ day of _____, 19___, in conformity with the attached schedule.~~
~~(See Section 9 of this administrative regulation for required information.)~~
~~(Name and address of company)~~
~~(Name and address of attorney)~~]

DAVID L. ARMSTRONG, Chairman
APPROVED BY AGENCY: October 12, 2012
FILED WITH LRC: October 15, 2012 at 10 a.m.
CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, November 13, 2012)

807 KAR 5:006. General rules.

RELATES TO: KRS ***65.810, 74, 96.934, 220.510,[~~Chapter~~]*** 278, 49 C.F.R. Part 192, 49 U.S.C. 60105
STATUTORY AUTHORITY: KRS 278.230, 278.280(2), 49 C.F.R. ***[~~Part~~]***192
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.230(3) ***requires every utility to file with the commission reports, schedules, and other information that the commission requires. KRS 278.280(2) requires the commission to promulgate an administrative regulation for the performance of a service or the furnishing of a commodity by a utility. This administrative regulation establishes requirements that apply to electric, gas, water, sewage, and telephone utilities.[~~provides that every utility shall file with the commission any reports, schedules or other information that the commission reasonably requires. KRS 278.280(2) provides that the commission~~]***[Public Service Commission (hereinafter referred to as "commission")]***[~~shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This administrative regulation establishes general rules which apply to electric, gas, water, sewage and telephone utilities.~~]***[~~This administrative regulation includes the substance of 807 KAR 5:008, which it repeals.~~]

Section 1. Definitions. (1) "***Built-up[~~Built-up~~]*** community" means urban areas and those areas immediately adjacent.
(2) "Commission" is defined ***by[~~in~~]*** KRS 278.010(15).
(3) "Corporation" is defined ***by[~~in~~]*** KRS 278.010(1).
(4) "Customer" means ***a[~~any~~]*** person, firm, corporation, or body politic applying for or receiving service from ***a[~~any~~]*** utility.
(5) "Gross Annual Operating ***Revenue*** Reports" means reports that KRS 278.140 requires each utility to file with the commission.
(6) "Nonrecurring charge" means a charge or fee assessed to ***a customer[~~customers~~]*** to recover the specific cost of an activity, which:
(a) Is due to a specific request for a certain type of service activity for which, once the activity is completed, additional charges ***are[~~shall~~]*** not ***[~~be~~]***incurred; and
(b) Is limited to only recover the specific cost of the specific service.
(7) "Person" is defined ***by[~~in~~]*** KRS 278.010(2).
(8) "Tariff" means a utility's schedule of all its rates, charges, tolls, maps, terms, and conditions of service over which the commission has jurisdiction.
(9) "Utility" is defined ***by[~~in~~]*** KRS 278.010(3).
(10) "Water association" means ***a[~~any~~]*** non-profit corporation, association, or cooperative corporation having as its purpose the furnishing of a public water supply.
(11) "Water District" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.

Section 2. General Provisions. ***[~~Any~~]***Reference to standards or codes in 807 KAR Chapter 5 ***[~~commission administrative regulations~~]***shall not prohibit a utility from continuing or initiating experimental work and installations to improve, decrease the cost of, or increase the safety of its service.

Section 3. Utility Contact Information. (1) A utility shall notify the commission in writing of:
(a) The address of its main corporate and Kentucky offices, including street address and post office box, city, state, and zip code;
(b) The name, telephone number, facsimile number, and mailing address of the person who serves as its primary liaison with the commission regarding its operations; and
(c) Its electronic mail address.
(2) The electronic mail address required in subsection (1) of this section shall be to an electronic mail account that the utility accesses at least once weekly and that is capable of receiving electronic mail from external sources and with attachments up to five (5) megabytes in size. Unless a utility otherwise advises the commission in writing, all electronic mail transmissions from the commission to the utility shall be sent to this address.
(3) A utility shall notify the commission in writing of ***a[~~any~~]*** change in the information required in subsection (1) of this section within ten (10) days of the date of the change.

Section 4. Reports. (1) Gross annual operating revenue reports.
(a) Each utility shall file with the commission its gross operating revenue report on or before March 31 of each year.
(b) An extension request shall not be permitted for ***a gross annual operating revenue report[~~Gross Annual Operating Revenue Reports~~]***.
(c) A utility may file an amendment to its report***. An amendment shall be filed*** with the commission on or before May 24 of the same year.
(d) The commission shall:
1. Not certify to the Department of Revenue the amounts of intrastate business ***established in an[~~set forth in any~~]*** amendment filed with the commission after May 24 of that year; and
2. Report those amounts to the Department of Revenue for informational purposes.

(2) Financial and statistical reports.

(a) Every utility shall file annually using the commission's electronic filing system a financial and statistical report on or before March 31 of each year.

(b) This report shall be based upon utility type and the accounts established in conformity with the uniform system of accounts prescribed for that utility type.

(c) If documents are required to supplement or complete the report and cannot be submitted through the commission's electronic filing system, the utility shall file these documents in paper form with the commission no later than March 31.

(d) The commission shall make the reporting forms available on the commission's Web site at http://psc.ky.gov/.

(e) For good cause shown, the executive director of the commission ***shall[may]***, upon application in writing, allow ***an appropriate[a reasonable]*** extension of time for the filing.

(3) Financial statement audit reports. A utility required to file a report in accordance with ***subsection (2) of this*** section ***[4(2) of this regulation]*** shall file with the commission on or before September 30 each year, a copy of the audit report of the Kentucky regulated entity, from the audit performed the previous year, or a statement that no audit was performed of the Kentucky regulated entity the previous year. For good cause shown, the executive director of the commission ***shall[may]***, upon application in writing, allow ***an appropriate[a reasonable]*** extension of time for the filing.

(4) Report of meters, customers, and refunds. Each gas, electric, or water utility shall file quarterly either a Quarterly Meter Report-Electric, Quarterly Meter Report, or a Quarterly Meter Report-Electric-Gas-Water, of meter tests, number of customers, and amount of refunds.

(5) Report of terminations for nonpayment of bills. Each water, electric, or gas utility shall file either the Water Utility Non-Payment Disconnection/Reconnection Report, Electric Utility Non-Payment Disconnection/Reconnection Report, or Gas Utility Non-Payment Disconnection/Reconnection Report, annually to report the number of residential accounts terminated for nonpayment. These reports shall be filed no later than August 15 and shall cover the period ending June 30.

(6) Record and report retention. All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified.

(7) Transmittal letter. Each report shall be accompanied by a transmittal letter describing the report being furnished.

(8) Amending reports. Upon discovering a material error in ***a[any]*** report ***[that it has]***filed with the commission, a utility shall file an amended report to correct the error.

Section 5. Service Information. (1)(a) A utility shall, on request, give its customers or prospective customers information that enables the customers to secure safe, efficient, and continuous service.

(b) A utility shall inform its customers of ***a[any]*** change made or proposed in the character of its service that might affect the efficiency, safety, or continuity of operation.

(2) Prior to making ***a[any]*** substantial change in the character of the service furnished that would affect the efficiency, adjustment, speed, or operation of the equipment or appliances of ***a[any]*** customer, a utility shall apply for the commission's approval. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

(3) The utility shall inform each applicant for service of each type, class, and character of service available at each location.

Section 6. Special Rules or Requirements. (1) A utility shall not establish ***a[any]*** special rule or requirement without first obtaining the approval of the commission***[on proper application]***.

(2) Unless specifically authorized by this administrative regulation, ***a utility shall not[no utility shall]*** deny or refuse service to a customer who has complied with all conditions of service ***established[set forth]*** in the utility's tariff on file with the commission

(3)(a) Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility.

(b) A utility shall not:

1. Require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service; or

2. Refuse to provide service to ***a[any]*** prospective or existing customer on the basis of that customer's refusal to grant an easement for facilities that do not serve the customer.

(c) The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with 807 KAR 5:041, ***5:061, or[807 KAR 5:061 or 807 KAR]*** 5:066.

Section 7. Billings, Meter Readings, and Information. (1) Information on bills.

(a) Each bill for utility service issued periodically by a utility shall clearly show:

1. The date the bill was issued;
2. Class of service;
3. Present and last preceding meter readings;
4. Date of the present reading;
5. Number of units consumed;
6. Meter constant, if ***applicable[any]***;
7. Net amount for service rendered;
8. All taxes;
9. ***Adjustments, if applicable[Any adjustments]***;
10. The gross amount of the bill;
11. The date after which a penalty may apply to the gross amount; and
12. ***If[Whether]*** the bill is estimated or calculated.

(b) The rate schedule under which the bill is computed shall be posted on the utility's Web site, if it maintains a Web site, and shall also be furnished under one (1) of the following methods***, by***:

1. ***[By]***Printing it on the bill;
2. ***[By]***Publishing it in a newspaper of general circulation once each year;
3. ***[By]***Mailing it to each customer once each year; or
4. ***[By]***Providing a place on each bill for a customer to indicate the customer's desire for a copy of the applicable rates. The utility shall mail the customer a copy by return first class mail.

(2) Flat rates. Flat rates for unmetered service shall approximate as closely as possible the utility's rates for metered service. The rate schedule shall clearly ***establish[set out]*** the basis upon which consumption is estimated.

(3) Bill format. Each utility shall include the billing form***; including an e-bill form, if applicable;[, including any e-bill form,]*** to be used by it, or its contents, in its tariffed rules.

(4) Meter readings. Registration of each meter shall read in the same units as used for billing unless a conversion factor is shown on the billing form.

(5) Frequency of meter reading.

(a) Except as provided in paragraph (b)***[or (c)]*** of this subsection, each utility, except if prevented by reasons beyond its control, shall read customer meters at least quarterly;

(b) Each customer-read meter shall be read manually, at least once during each calendar year.

(c) ***[Each customer meter using remote reading technology shall be inspected for proper working condition and the meter registration recorded]***[**readings verified**] ***[at the intervals established in Section 26(4)(e), Section 26(5)(a)(2), or Section 26(6)(b) of this administrative regulation.***

[(d)] Records shall be kept by the utility to insure that the information required by this subsection is available to the commission and any customer requesting this information.

(d)[(e)] If, due to reasons beyond its control, a utility is unable to read a meter in accordance with this subsection, the utility shall record the date and time the attempt was made, if applicable, and the reason the utility was unable to read the meter.

Section 8. Deposits. (1) Determination of deposits.

(a) A utility may require from ***a[any]*** customer a minimum cash deposit or other guaranty to secure payment of bills, except from those customers qualifying for service reconnection ***pursuant to[under]*** Section 16 of this administrative regulation.

(b) A utility shall not require a deposit based solely on the cus-

tomer being a tenant or renter.

(c) The method of determining the amount of a cash deposit may differ between classes of customers, but shall be uniform for all customers within the same class.

(d) The amount of a cash deposit shall be determined by one (1) of the methods established in this paragraph.

1. Calculated deposits.

a.[(a)] If actual usage data is available for the customer at the same or similar premises, the deposit amount shall be calculated using the customer's average bill for the most recent twelve (12) month period.

b.[(b)] If actual usage data is not available, the deposit amount shall be based on the average bills of similar customers and premises in the system.

c.[(c)] Deposit amounts shall not exceed two-twelfths (2/12) of the customer's actual or estimated annual bill if bills are rendered monthly, three-twelfths (3/12) if bills are rendered bimonthly, or four-twelfths (4/12) if bills are rendered quarterly.

2. Equal deposits.

a.[(a)] A utility may establish an equal deposit amount for each class based on the average bill of customers in that class.

b.[(b)] Deposit amounts shall not exceed two-twelfths (2/12) of the average bill of customers in the class if bills are rendered monthly, three-twelfths (3/12) if bills are rendered bimonthly, or four-twelfths (4/12) if bills are rendered quarterly.

3. Recalculation of deposits.

a. If a utility retains either an equal or calculated deposit for more than eighteen (18) months, it shall notify customers in writing that, at the customer's request, the deposit shall be recalculated every eighteen (18) months based on actual usage of the customer.

b. The notice of deposit recalculation shall be included:

(i) On the customer's application for service;

(ii) On the receipt of deposit; or

(iii) Annually with or on customer bills.

c. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars for residential customers, or by more than ten (10) percent for nonresidential customers, from the deposit calculated on actual usage, the utility shall refund any over-collection and may collect any underpayment.

d. ***A refund[Refunds]*** shall be made either by check, electronic funds transfer, or by credit to the customer's **account[bill]**, except that a utility shall not be required to refund ***an[any]*** excess deposit if the customer's **account[bill]** is delinquent ***upon recalculation of[when]*** the deposit***[is recalculated]***.

(2) Waiver of deposits. Deposits may be waived ***[at the discretion of a utility]***in accordance with criteria ***established[set forth]*** in its tariff.

(3) Additional deposit requirement.

(a) If a deposit has been waived as ***established[allowed]*** in subsection (2) of this section***[,]*** or has been returned and the customer fails to maintain a satisfactory payment record as defined in the utility's tariff, a utility may require a deposit.

(b) If substantial change in the customer's usage has occurred, the utility may require an additional deposit.

(c) An additional or subsequent deposit shall not be required of ***a*** residential ***customer[customers]*** whose payment record is satisfactory, unless the customer's classification of service changes, except as ***established[provided]*** in subsection (1)(d)3 of this section.

(4) Receipt of deposit.

(a) A utility shall issue to every customer from whom a deposit is collected a receipt of deposit.

(b) The receipt shall show the name of the customer, location of the service or customer account number, date, and amount of deposit.

(c) If the notice of recalculation ***established[described]*** in subsection (1)(d)3 of this section is not included in the utility's application for service or mailed with customer bills, the receipt of deposit shall contain the notification.

(d) If deposit amounts change, the utility shall issue a new receipt of deposit to the customer.

(5) Deposits as a condition of service. Except as ***established in[provided by]*** Section 16 of this administrative regulation, a utility may refuse or discontinue service to a customer pursuant to Section 15 of this administrative regulation if payment of requested deposits is not made.

(6) Interest on deposits.

(a) Interest shall accrue on all deposits at the rate prescribed by ***KRS 278.460[law]***, beginning on the date of deposit.

(b) Interest accrued shall be refunded to the customer or credited to the customer's bill on an annual basis.

(c) If interest is paid or credited to the customer's bill prior to twelve (12) months from the date of deposit, or the last interest payment date, the payment or credit shall be on a prorated basis.

(d) Upon termination of service, the deposit***;[,]*** any principal amounts, and interest earned and owing shall be credited to the final bill with any remainder refunded to the customer.

(7) Interest on deposits for water districts and associations.

(a) A water district or association that maintains a separate interest-bearing bank account designated as the customer deposit account shall pay interest to its customers on the deposits held at the rate in effect at each customer's anniversary date or at December 31 of the previous year for the customer deposit account.

(b) A water district or association that does not maintain a separate interest-bearing bank account designated as the customer deposit account shall pay interest to its customers on the deposits held at a rate that is the weighted average rate of all of its interest bearing accounts as of December 31 of the previous year.

(c) If the water district or association does not have ***[any]***funds in an interest-bearing account, the water district or association shall pay interest to its customers on the deposits held at the rate in effect at each customer's anniversary date or at December 31 of the previous year for a basic savings account at the financial institution ***at which[where]*** the water district or association maintains its operation and maintenance account.

(8) Tariff requirements. A utility that chooses to require deposits shall establish and include in its filed tariff the deposit policy to be utilized. This policy shall include:

(a) The method by which deposit amounts will be determined for each customer class;

(b) Standard criteria for determining ***if[when]*** a deposit will be required or waived;

(c) The deposit amount for each customer class if the method in subsection (1)**(d)(2)[(b)]** of this section is used;

(d) The period of time the utility will retain the deposit, or the conditions under which the utility will refund the deposit, or both if applicable; and

(e) The manner in which interest on deposits will be calculated and accrued and refunded or credited to customers' bills.

Section 9. Nonrecurring Charges. (1) A utility may make special nonrecurring charges to recover customer-specific costs incurred that would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken. ***A[Any]*** utility desiring to establish or change ***a[any]*** special nonrecurring charge shall apply for commission approval of the charge in accordance with the provisions of 807 KAR 5:011, Section 10.

(2) ***A nonrecurring charge[Nonrecurring charges]*** shall be included in a utility's tariff and applied uniformly throughout the area served by the utility. ***A charge[They]*** shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3) ***A nonrecurring charge[Nonrecurring charges]*** shall include the charges listed in this subsection and may include other customer specific costs in accordance with this section and 807 KAR 5:011**,** Section 10.

(a) Turn-on charge.

1. A turn-on charge may be assessed for a new service turn on, seasonal turn on**,** or temporary service.

2. A turn-on charge shall not be made for initial installation of service if a tap fee is applicable.

(b) Reconnect charge.

1. A reconnect charge may be assessed to reconnect a service ***that[which]*** has been terminated for nonpayment of bills or violation of the utility's ***tariffed*** rules or 807 KAR Chapter 5.

2. ***A customer who qualifies[~~Customers qualifying~~]*** for service reconnection ***pursuant to[~~under~~]*** Section 16 of this administrative regulation shall be exempt from reconnect charges.

(c) Termination or field collection charge.

1. A charge may be assessed if a utility representative makes a trip to the premises of a customer for the purpose of terminating service.

2. The charge may be assessed if the utility representative actually terminates service or if, in the course of the trip, the utility representative agrees to delay termination based on the customer's payment or agreement to pay the delinquent bill by a specific date.

3. The utility shall not make a field collection charge more than once in ***a[~~any~~]*** billing period.

(d) Special meter reading charge. This charge may be assessed if:

1. A customer requests that a meter be reread, and the second reading shows the original reading was correct. A charge shall not be assessed if the original reading was incorrect; or

2. A customer who reads his or her own meter fails to read the meter for three (3) consecutive months***[~~,~~]*** and it is necessary for a utility representative to make a trip to read the meter.

(e) Meter resetting charge. A charge may be assessed for resetting a meter if the meter has been removed at the customer's request.

(f) Meter test charge. This charge may be assessed if a customer requests the meter be tested pursuant to Section 19 of this administrative regulation***[~~,~~]*** and the tests show the as-found meter accuracy is within the limits ***established[~~allowed~~]*** by 807 KAR 5:022**,** Section ***8(3)(a)1. and 8(3)(b)1.[~~8(3)(a)(1) and 8(3)(b)(1)~~]***; ***[~~807 KAR~~]***5:041, Section 17(1); or ***[~~807 KAR~~]***5:066, Section 15(2)(a).

(g) Returned payment charge. A returned payment charge may be assessed if ***[~~any form of accepted~~]***payment of a utility bill is not honored by the customer's financial institution.

(h) Late payment charge. A late payment charge may be assessed if a customer fails to pay a bill for services by the due date shown on the customer's bill.

1. The late payment charge may be assessed only once on ***a[~~any~~]*** bill for rendered services.

2. A[~~Any~~] payment received shall first be applied to the bill for service rendered.

3. Additional late payment charges shall not be assessed on unpaid late payment charges.

Section 10. Customer Complaints to the Utility. (1) Upon complaint to a utility by a customer at the utility's office, by telephone or in writing, the utility shall make a prompt and complete investigation and advise the customer of ***the utility's[~~its~~]*** findings.

(2) The utility shall keep a record of all written complaints concerning ***the utility's[~~its~~]*** service. This record shall include:

(a) The customer's name and address;

(b) The date and nature of the complaint; and

(c) The disposition of the complaint.

(3) Records shall be maintained for two (2) years from the date of resolution of the complaint.

(4) If a written complaint or a complaint made in person at the utility's office is not resolved, the utility shall provide written notice to the customer of his or her right to file a complaint with the commission***[~~,~~]*** and shall provide the customer with the mailing address, Web site address**,** and telephone number of the commission.

(5) If a telephonic complaint is not resolved, the utility shall provide at least oral notice to the customer of his or ***her*** right to file a complaint with the commission and the mailing address, Web site address**,** and telephone number of the commission.

Section 11. Bill Adjustment for Gas, Electric**,** or Water Utilities. (1) If, upon periodic test, request test, or complaint test, a meter in service is found to be in error in excess of the limits ***established[~~allowed~~]*** by 807 KAR 5:022, Section ***8(3)(a)2.[~~8(3)(a)(2)~~]***; ***[~~807 KAR~~]***5:041, Section 17(1); or ***[~~807 KAR~~]***5:066, Section 15(4), additional tests shall be made in accordance with those same administrative regulations applicable for the meter type involved to determine the average meter error.

(2)(a) If test results on a customer's meter show an average meter error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for ***another[~~any other~~]*** reason, except if a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility shall:

1. Immediately determine the period during which the error has existed;

2. Recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer; and

3. Readjust the account based upon the period during which the error is known to have existed.

(b)1. If the period during which the error existed cannot be determined with reasonable precision, the time period shall be estimated using the data as elapsed time since the last meter test, if applicable, and historical usage data for the customer.

2. If that data is not available, the average usage of a similar class of customers shall be used for comparison purposes in calculating the time period.

(c) If the customer and the utility are unable to agree on an estimate of the time period during which the error existed, the commission shall determine the issue ***based on this section***.

(d) In ***an instance[~~all instances~~]*** of customer overbilling, the customer's account shall be credited or the overbilled amount refunded at the discretion of the customer within thirty (30) days after the investigation is complete.

(e) A utility shall not require customer repayment of ***an[~~any~~]*** underbilling to be made over a period shorter than a period coextensive with the underbilling.

(3) Monitoring usage.

(a) A utility shall monitor a customer's usage at least quarterly according to procedures that shall be included in its tariff.

(b) The procedures shall be designed to draw the utility's attention to unusual deviations in a customer's usage and shall provide for reasonable means by which the utility can determine the reasons for the unusual deviation.

(c) If a customer's usage is unduly high and the deviation is not otherwise explained, the utility shall test the customer's meter to determine ***if[~~whether~~]*** the meter shows an average meter error greater than two (2) percent fast or slow.

(4) Usage investigation.

(a) If a utility's procedure for monitoring usage indicates that an investigation of a customer's usage is necessary, the utility shall notify the customer in writing:

1. Within ten (10) days of removing the meter from service, that a usage investigation is being conducted and the reasons for the investigation; and

2. Within ten (10) days upon completion of the investigation of the findings of the investigation.

(b) If knowledge of a serious situation requires more expeditious notice, the utility shall notify the customer by the most expedient means available.

(c) If the meter shows an average meter error greater than two (2) percent fast or slow, the utility shall maintain the meter in question at a secure location under the utility's control, for a period of **six (6) months[~~one (1) year~~]** from the date the customer is notified of the finding of the investigation **and the time frame the meter will be secured by the utility** or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.

(5) Customer notification. If a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On _____, (date) ___, the meter bearing identification No. _____ installed in your building located at _____ (Street and Number) in _____ (city) was tested at _____ (on premises or elsewhere) and found to register _____ (percent fast or slow). The meter was tested on _____ (Periodic, Request, Complaint) test. Based upon these test results the utility will _____ (charge or credit) your account in the sum of $_____, which has been noted on your regular bill. If you desire a cash refund, rather than a credit to your account, of any amount overbilled, you shall notify this office in writing within seven

(7) days of the date of this notice.

(6) A customer account shall be considered to be current while a dispute is pending pursuant to this section, if the customer***:***

(a) Continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads; and

(b) Stays current on subsequent bills.

Section 12. Status of Customer Accounts During Billing Dispute. With respect to ***a[~~any~~]*** billing dispute to which Section 11 of this administrative regulation does not apply, a customer account shall be considered to be current while the dispute is pending if the customer continues to make undisputed payments and stays current on subsequent bills.

Section 13. Customer's Request for Termination of Service. (1)(a) ***A customer who requests that service be[~~Any customer desiring service~~]*** terminated or changed from one (1) address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, if the notice does not violate contractual obligations or tariff provisions.

(b) The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides access to the meter during the notice period in accordance with section 20 of this administrative regulation.

(c) If the customer notifies the utility of his request for termination by telephone, the burden of proof shall be on the customer to prove that service termination was requested if a dispute arises.

(2) Upon request that service be reconnected at ***a[~~any~~]*** premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant a reconnect fee ***established[~~set out~~]*** in its filed tariff.

(3) ***A[~~Any~~]*** utility desiring to establish a termination or reconnection charge ***pursuant to[~~under the provisions of~~]*** subsection (2) of this section shall apply for commission approval of the charge in accordance with the provisions of 807 KAR 5:011, Section 10.

Section 14. Utility Customer Relations. (1) A utility shall post and maintain regular business hours and provide representatives available to assist its customers and to respond to inquiries from the commission regarding customer complaints.

(a) Available telephone numbers. Each utility shall:

1. Maintain a telephone;

2. Publish***[~~, shall publish~~]*** the telephone number in all service areas; and

3. Permit all customers to contact the utility's designated representative without charge.

(b) Designated representatives. Each utility shall designate at least one (1) representative to be available to answer customer questions, resolve disputes**,** and negotiate partial payment plans at the utility's office. The designated representative shall be knowledgeable of this ***administrative*** regulation; 807 KAR 5:001**,** Section 13; KRS 278.160(2); and KRS 278.225 regarding customer bills and service and shall be authorized to negotiate and accept partial payment plans.

1. Each water, sewer, electric, or gas utility having annual operating revenues of $250,000 or more shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, five (5) days per week, excluding legal holidays.

2. Each water, sewer, electric, or gas utility having annual operating revenues of less than $250,000 shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) day per week. Additionally, during the months of November through March, each utility providing gas or electric service shall make available the designated representative during the utility's established working hours not fewer than five (5) days per week, excluding legal holidays.

(c) Display of customer rights.

1. Each utility shall prominently display in each office open to the public for customer service, and shall post on its Web site, if it maintains a Web site, a summary, prepared and provided by the commission**,** of the customer's rights ***pursuant to[~~under~~]*** this section and Section 16 of this administrative regulation.

2. If a customer indicates to any utility personnel that he or she is experiencing difficulty in paying a current utility bill, that employee shall refer the customer to the designated representative for an explanation of his or her rights.

(d) Utility personnel training.

1. The chief operating officer of ***a[~~any~~]*** utility that provides electric or gas service to residential customers shall certify under oath annually the training of utility personnel assigned to counsel persons presenting themselves for utility service ***pursuant to[~~under the provisions of~~]*** this section.

2. If the electric or gas utility is not incorporated in Kentucky and ***if the utility's[~~its~~]*** corporate headquarters is not located in Kentucky, then ***the utility's[~~its~~]*** highest ranking officer located in Kentucky shall make the required certification.

3. Training shall include an annual review of this administrative regulation and policies regarding winter hardship and disconnect***[~~administrative regulations~~]***, Cabinet for Health and Family Services (or its designee) policy and programs for issuing certificates of need, and the utility's policies regarding collection, arrears repayment plans, budget billing procedures, and ***weather or health[~~weather/health~~]*** disconnect policies.

4. Certification shall include written notice to the commission by no later than October 31 of each year identifying the personnel trained, the date training occurred, and that the training met the requirements of this section.

(2) Partial payment plans. Each utility shall negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay as provided in Section 15 of this administrative regulation, except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject to the conditions in this section and Section 15 of this administrative regulation. Partial payment plans ***that[~~which~~]*** extend for a period longer than thirty (30) days shall be in writing **or electronically recorded**, state the date and the amount of payment due**. Written partial payment plans shall[~~,~~]** be dated and signed by **both parties[~~the utility representative~~]**, and shall advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.

(a) Budget payment plans for water, gas**,** and electric utilities. A water, gas**,** and electric utility shall develop and offer to ***the utility's[~~its~~]*** residential customers a budget payment plan based on historical or estimated usage whereby a customer may elect to pay a fixed amount each month in lieu of monthly billings based on actual usage.

1. Pursuant to[~~Under~~] this plan, a utility shall issue bills ***that[~~which~~]*** adjust accounts so as to bring each participating customer current once each twelve (12) month period. The customer's account may be adjusted at the end of the twelve (12) month period or through a series of levelized adjustments on a monthly basis if usage indicates that the account will not be current upon payment of the last budget amount.

2. Budget payment plans shall be offered to residential customers and may be offered to other classes of customers.

3. The provisions of the budget plan shall be included in the utility's tariffed rules.

4. The utility shall provide information to its customers regarding the availability of budget payment plans.

(b) Partial payment plans for customers with medical certificates or certificates of need. For customers presenting certificates ***pursuant to[~~under~~]*** the provisions of Sections 15(3) and 16 of this administrative regulation, gas and electric utilities shall negotiate partial payment plans based upon the customer's ability to pay, requiring accounts to become current not later than the following October 15. The plans ***include, for example[~~may include, but are not limited to~~]***, budget payment plans and plans that defer payment of a portion of the arrearage until after the end of the heating season through a schedule of unequal payments.

(3) Utility inspections of service conditions prior to providing service. Each electric, gas, water**,** and sewer utility shall inspect

the condition of its meter and service connections before making service connections to a new customer so that prior or fraudulent use of the facilities ***shall[~~will~~]*** not be attributed to the new customer.

(a) The new customer shall be afforded the opportunity to be present at the inspections.

(b) The utility shall not be required to render service to ***a[~~any~~]*** customer until all defects in the customer-owned portion of the service facilities have been corrected.

(4) Prompt connection of service. Except as provided in Section 16 of this administrative regulation, the utility shall reconnect existing service within twenty-four (24) hours or close of the next business day, whichever is later, and shall install and connect new service within seventy-two (72) hours or close of the next business day, whichever is later, ***if[~~when~~]*** the cause for refusal or discontinuance of service has been corrected and the utility's tariffed rules and ***807 KAR Chapter 5[~~the commission's administrative regulations~~]*** have been met.

(5) Advance termination notice. ***If[~~When~~]*** advance termination notice is required, the termination notice shall be mailed or otherwise delivered to the customer's last known address. The termination notice shall be in writing, distinguishable and separate from ***a bill.***

(a)[~~any bill.~~] The termination notice shall plainly state the reason for termination, that the termination date ***shall[~~will~~]*** not be affected by receipt of ***a[~~any~~]*** subsequent bill, and that the customer has the right to dispute the reasons for termination.

(b) The termination notice shall also comply with the applicable requirements of Section 15 of this administrative regulation.

Section 15. Refusal or Termination of Service. (1) A utility may refuse or terminate service to a customer only ***pursuant to[~~under~~]*** the following conditions**,** except as provided in subsections (2) and (3) of this section:

(a) For noncompliance with the utility's tariffed rules or the commission's administrative regulations.

1. A utility may terminate service for a customer's failure to comply with applicable tariffed rules or ***807 KAR Chapter 5[~~the commission's administrative regulations~~]*** pertaining to that service.

2. A utility shall not terminate or refuse service to a customer for noncompliance with the utility's tariffed rules or 807 KAR Chapter 5[~~However, no utility shall terminate or refuse service to any customer for noncompliance with its tariffed rules or the commission's administrative regulations~~] without first having made a reasonable effort to obtain customer compliance.

3. After the effort by the utility, service may be terminated or refused only after the customer has been given at least ten (10) days written termination notice pursuant to Section 14(5) of this administrative regulation.

(b) For dangerous conditions. If a dangerous condition relating to a utility's service that could subject ***a[~~any~~]*** person to imminent harm or result in substantial damage to the property of the utility or others is found to exist on the customer's premises, the service shall be refused or terminated without advance notice.

1. The utility shall notify the customer immediately in writing and, if possible, orally of the reasons for the termination or refusal.

2. The notice shall be recorded by the utility and shall include the corrective action to be taken by the customer or utility before service can be restored or provided.

3.[~~However,~~] If the dangerous condition, such as gas piping or a gas-fired appliance, can be effectively isolated or secured from the rest of the system, the utility need discontinue service only to the affected piping or appliance.

(c) For refusal of access. ***If[~~When~~]*** a customer refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance**,** or removal of utility property, the utility may terminate or refuse service. The action shall be taken only ***if[~~when~~]*** corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has been given at least ten (10) days' written notice of termination pursuant to Section 14(5) of this administrative regulation.

(d) For outstanding indebtedness. Except as provided in Section 16 of this administrative regulation, a utility shall not be required to furnish new service to ***a[~~any~~]*** **person contracting for service[~~customer~~]** who is indebted to the utility for service furnished or other tariffed charges until that **person contracting for service[~~customer~~]** has paid his indebtedness.

(e) For noncompliance with state, local**,** or other codes. A utility may refuse or terminate service to a customer if the customer does not comply with state, municipal**,** or other codes***[~~, rules and administrative regulations applying to the service~~]***. A utility may terminate service pursuant to this subsection only after ten (10) days' written notice is provided pursuant to Section 14(5) of this administrative regulation, unless ordered to terminate immediately by a governmental official.

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery***. A utility shall not[~~; however, no utility shall~~]*** terminate service to any **person contracting for service[~~customer~~]** for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 14(5) of this administrative regulation.

1. Termination notice requirements for electric or gas service.

a. Each electric or gas utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer ten (10) days' written notice of intent to terminate.

b. Service shall not, for any reason,[~~Under no circumstances shall service~~] be terminated before twenty-seven (27) days after the mailing date of the original unpaid bill.

c. The termination notice to residential customers shall include written notification to the customer of the existence of local, state**,** and federal programs providing for the payment of utility bills under certain conditions, and of the address and telephone number of the Cabinet for Health and Family Services (or its designee) to contact for possible assistance.

2 Termination notice requirements for water, sewer, or telephone service.

a. Each water, sewer, or telephone utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer five (5) days' written notice of intent to terminate.

b. Service shall not, for any reason,[~~Under no circumstances shall service~~] be terminated before twenty (20) days after the mailing date of the original unpaid bill.

3. The termination notice requirements of this subsection shall not apply if termination notice requirements to a particular customer or customers are otherwise dictated by the terms of a special contract between the utility and customer**,** which has been approved by the commission.

4. This subsection shall not prevent or restrict a utility from discontinuing service ***if[~~when~~]*** a sewer service provider requests discontinuance of a customer's water service pursuant to KRS 74.408, ***[~~KRS~~]***96.934**,** or ***[~~KRS~~]***220.510, nor shall it restrict a water district from discontinuing water service to a customer who has failed to pay his bill for sewer service that the water district has provided.

(g) For illegal use or theft of service. A utility may terminate service to a customer without advance notice if it has evidence that a customer has obtained unauthorized service by illegal use or theft.

1.a. Within twenty-four (24) hours after termination, the utility shall send written notification to the customer of the reasons for termination or refusal of service upon which the utility relies, and of the customer's right to challenge the termination by filing a formal complaint with the commission.

b. This right of termination is separate from and in addition to any other legal remedies ***that[~~which~~]*** the utility may pursue for illegal use or theft of service.

2. The utility shall not be required to restore service until the customer has complied with all tariffed rules of the utility***, KRS Chapter 278, and 807 KAR Chapter 5[~~and laws and administrative regulations of the commission~~]***.

(2) A utility shall not terminate service to a customer if:

(a) Payment for services is made. If, following receipt of a termination notice for nonpayment but prior to the actual termination

of service payment of the amount in arrears is received by the utility, service shall not be terminated***;[.]***

(b) A payment agreement is in effect. Service shall not be terminated for nonpayment if the customer and the utility have entered into a partial payment plan in accordance with Section 14 of this administrative regulation and the customer is meeting the requirements of the plan***; or[.]***

(c) A medical certificate is presented. Service shall not be terminated for thirty (30) days beyond the termination date if a physician, registered nurse**,** or public health officer certifies in writing that termination of service will aggravate a debilitating illness or infirmity currently suffered by a resident living at the affected premises.

1. A utility may refuse to grant consecutive extensions for medical certificates past the original thirty (30) days unless the certificate is accompanied by an agreed partial payment plan in accordance with Section 14 of this administrative regulation.

2. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents to the utility a medical certificate certified in writing by a physician, registered nurse**,** or public health officer.

(3) A gas or electric utility shall not terminate service for thirty (30) days beyond the termination date if the Kentucky Cabinet for Health and Family Services (or its designee) certifies in writing that the customer is eligible for the cabinet's energy assistance program or household income is at or below 130 percent of the poverty level, and the customer presents the certificate to the utility.

(a) A customer[~~Customers~~] eligible for certification from the Cabinet for Health and Family Services shall have been issued a termination notice between November 1 and March 31.

(b) Each certificate[~~Certificates~~] shall be presented to the utility during the initial ten (10) day termination notice period.

(c)1. As a condition of the thirty (30) day extension, the customer shall exhibit good faith in paying his indebtedness by making a present payment in accordance with his ability to do so.

2. In addition, the customer shall agree to a repayment plan in accordance with Section 14 of this administrative regulation***, which shall[~~which will~~]*** permit the customer to become current in the payment of his bill as soon as possible but not later than October 15.

(d) A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents a certificate to the utility certified by the Cabinet for Health and Family Services (or its designee) that the customer is eligible for the cabinet's Energy Assistance Program or whose household income is at or below 130 percent of the poverty level.

Section 16. Winter Hardship Reconnection. (1) Notwithstanding the provisions of Section 14(4) of this administrative regulation to the contrary, an electric or gas utility shall reconnect service to a residential customer who has been disconnected for nonpayment of bills pursuant to Section 15(1)(f) of this administrative regulation prior to application for reconnection, and who applies for reconnection during the months from November 1 through March 31 if the customer or his agent:

(a) Presents a certificate of need from the Cabinet for Health and Family Services (or its designee), including a certification that a referral for weatherization services has been made in accordance with subsection (3) of this section;

(b) Pays one-third (1/3) of his outstanding bill or $200, whichever is less; and

(c) Agrees to a repayment schedule ***that[~~which~~]*** would permit the customer to become current in the payment of his electric or gas bill as soon as possible but no later than October 15.

1.[~~However,~~] If the customer applies for reconnection and the customer has an outstanding bill in excess of $600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with his ability to pay, then the plan shall be accepted.

2. In addition to payment of current charges, repayment schedules shall provide an option to the customer to select either one (1) payment of arrearages per month or more than one (1) payment of arrearages per month.

(d) A utility shall not require a new deposit from a customer whose service is reconnected due to paragraphs (a), (b)**,** or (c) of this subsection.

(2) Certificate of need for reconnection. A customer who is eligible for energy assistance under the Cabinet for Health and Family Services' guidelines or is certified as being in genuine financial need, which is defined as ***a[~~any~~]*** household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the cabinet (or its designee) to be used in obtaining a service reconnection from the utility.

(3) Weatherization program. Customers obtaining a certificate of need ***pursuant to[~~under~~]*** this administrative regulation shall agree to accept referral to and utilize weatherization services ***[~~which are~~]***administered by the Cabinet for Health and Family Services. The provision and acceptance of weatherization services ***shall be[~~is~~]*** contingent on the availability of funds and other program guidelines. Weatherization services include, ***for example[~~but are not limited to~~]***, weather stripping, insulation**,** and caulking. ***A customer current with his or her payment plan pursuant to subsection 1(c)[~~(4) Customers who are current in their payment plans under subsection 1(c)~~]*** of this section shall not be disconnected.

Section 17. Meter Testing. (1) All electric, gas**,** and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically ***established in 807 KAR 5:022, 5:041, and 5:066[~~set out under 807 KAR 5:022, 807 KAR 5:041 and 807 KAR 5:066~~]***. Before being installed for use by ***a[~~any~~]*** customer, an electric, gas**,** and water meter shall be tested and in good working order and shall be adjusted as close to the optimum operating tolerance as possible, as more specifically ***established[~~set out~~]*** in 807 KAR 5:022, Section 8(3)(a), ***[~~807 KAR~~]***5:041, Section 17(1)(a)-(c)**,** and ***[~~807 KAR~~]***5:066, Section 15(2)(a)-(b).

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for that purpose. Each utility having tests made by another agency or utility shall notify the commission of those arrangements in detail to include make, type**,** and serial number of standards used to make the tests.

(3) ***A utility shall not place in service a[~~No utility shall place in service any~~]*** basic measurement standard required by ***807 KAR Chapter 5[~~these rules~~]*** unless the calibration has been approved by the commission. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of ***a basic standard[~~any basic standards~~]*** requiring commission approval of the calibration.

(4) An electric, gas**,** and water utility or agency doing meter testing for a utility shall have in its employ meter testers certified by the commission. These certified meter testers shall perform tests as necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by ***807 KAR Chapter 5[~~commission administrative regulations~~]***.

(5) A utility or agency desiring to have an employee certified as meter tester shall submit the name of each applicant on an "Application for Appointment of Meter Tester." The applicant shall pass a written test administered by commission staff and have his competency in the testing of meters verified by commission staff, at which time the applicant ***shall[~~may~~]*** be certified as a meter tester and furnished with a card authorizing him to perform meter tests.

(6) A utility or agency may employ apprentices in training for certification as meter testers.

(a) The apprentice period shall be a minimum of six (6) months, after which the meter tester apprentice shall comply with subsection (5) of this section.

(b) All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.

Section 18. Meter Test Records. (1)(a) A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meter tester. The record shall include:

1. Information to identify the unit and its location;
2. Date of tests;
3. Reason for the tests;

4. Readings before and after test;

5. Statement of "as found" and "as left" accuracies sufficiently complete to permit checking of calculations employed;

6. Notations showing that all required checks have been made;

7. Statement of repairs made, if any;

8. Identifying number of the meter;

9. Type and capacity of the meter; and

10. The meter constant.

(b) The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years.

(2) Historical records. (a) A utility shall keep numerically arranged and properly classified records for each meter that it owns, uses**,** and inventories.

(b) These records shall include:

1. Identification number***;[,]***

2. Date of purchase***;[,]***

3. Name of manufacturer***;[,]***

4. Serial number***;[,]***

5. Type***;[,]***

6. Rating***;[,]*** and

7. Name and address of each customer on whose premises the meter has been in service with date of installation and removal.

(c) These records shall also contain condensed information concerning all tests and adjustments including dates and general results of the adjustments. The records shall reflect the date of the last test and indicate the proper date for the next periodic test required by the applicable commission administrative regulation ***in 807 KAR Chapter 5***.

(3) Sealing of meters. Upon completion of adjustment and test of ***a[any]*** meter pursuant to ***807 KAR Chapter 5[the commission's administrative regulations]***, a utility shall affix to the meter a suitable seal in a manner that adjustments or registration of the meter cannot be altered without breaking the seal.

(4) A utility may store ***[any or all of]***the meter test and historical data described or required in subsections (1) and (2) of this section in a computer storage and retrieval system upon notification to the commission. If a utility elects to use a computer storage and retrieval system, a back-up copy of the identical information shall be retained.

Section 19. Request Tests. (1) A utility shall make a test of ***a[any]*** meter upon written request of ***a[any]*** customer if the request is not made more frequently than once each twelve (12) months.

(a) The customer shall be given the opportunity to be present at the ***requested test***.

(b)[request tests.] If the tests show the as-found meter accuracy is within the limits allowed by 807 KAR 5:022**,** Section ***8(3)(a)1., 5:022,[8(3)(a)(1), 807 KAR 5:022]*** Section ***8(3)(b)1., 5:041,[8(3)(b)(1), 807 KAR 5:041]*** Section 17(1)**,** or ***[807 KAR]***5:066**,** Section 15(4), the utility may make a reasonable charge for the test.

(c) The commission-approved amount of the charge shall be established[The amount of the charge shall be approved by the commission and set out] in the utility's filed tariff.

(d) The utility shall maintain ***a[any]*** meter removed from service for testing, in a secure location under the utility's control, for a period of **six (6) months[one year]** from the date the customer is notified of the finding of the investigation **and the time frame the meter will be secured by the utility** or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved, or the meter is picked up for testing by personnel from the commission's Meter Standards Laboratory.

(2) After having first obtained a test from the utility, ***a[any]*** customer of the utility may request a meter test by the commission upon written application.

(a) The request shall not be made more frequently on one (1) meter than once each twelve (12) months.

(b) Upon request, personnel from the commission's Meter Standards Laboratory shall pick up the meter from the utility and maintain the meter for a minimum of **six (6) months[one year]** from the date the customer is notified of the finding of the investigation **and the time frame the meter will be secured by the commission's Meter Standards Laboratory** or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.

Section 20. Access to Property. The utility shall at all reasonable hours have access to meters, service connections**,** and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation, replacement**,** or removal of its property**[when service is to be terminated]**. ***An[Any]*** employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, ***and[or]*** show a badge or other identification ***that shall[which will]*** identify him as an employee of the utility.

Section 21. Pole Identification. (1) Each utility owning poles or other structures supporting its wires shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every structure can be readily determined.

(2) Identification marks may be of any type but shall be of a permanent material and shall be easily read from the ground at a distance of six (6) feet from the structure.

(3) If ***a utility's[utilities']*** structures are located outside of a built-up community, at least every tenth structure shall be marked as ***established[set forth]*** in subsection (2) of this section.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) A utility shall either number its structures and maintain a numbering system or use some other method of identification so that each structure in the system can be easily identified.

Section 22. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities supporting its wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to poles and to use facilities, as customers, for transmission of signals to their patrons.

(2) The tariffs of the utility shall ***establish[set forth]*** the rates, terms**,** and conditions under which the utility's facilities may be used.

(3) With respect to a complaint before the commission in ***an[any]*** individual matter concerning cable television pole attachments**,** final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.

Section 23. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve. **The map or maps should be[If the maps are]** available **preferably** in electronic format**[, they shall be filed]** as a PDF file or as a **digital geographic database[commission readable geographic information system (GIS) file. Maps generated on and after the effective date of this regulation shall be filed as a PDF file and as a commission readable geographic information system (GIS) file]**. The following data shall be available on the map or maps:

(a) Operating districts***;[.]***

(b) Rate districts***;[.]***

(c) Communities served***;[.]***

(d) Location and size of transmission lines, distribution lines and service connections***;[.]***

(e) Location and layout of all principal items of plant***; and[.]***

(f) Date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available information relative to the utility's system that will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above construction information in (1)(f) on maps, a card record or suitable **digital data[means]** may

be used.

(a) The construction data about a plant feature, such as a pipeline, may be stored in a table and linked to the geographic plant feature by a unique identifier that is present in both the table and the geographic database.

(b) For all **prospective** construction the records shall also show the date of construction by month and year.

Section 24. Location of Records. All records required by ***807 KAR Chapter 5[~~the commission's administrative regulations~~]*** shall be kept in the office of the utility and shall be made available to representatives, agents***,*** or staff of the commission upon reasonable notice at all reasonable hours.

Section 25. Safety Program. Each utility shall adopt and execute a safety program, appropriate to the size and type of its operations. At a minimum, the safety program shall:

(1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees***;[~~.~~]***

(2) Instruct employees in safe methods of performing their work. For electric utilities, this is to include the ***standards established in 807 KAR 5:041, Section 3; and[~~acceptable standards listed in 807 KAR 5:041 Section 3;~~]***[~~.~~]

(3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation***,*** or drowning, in accepted methods of artificial respiration.

Section 26. Inspection of Systems. (1) A utility shall adopt inspection procedures to assure safe and adequate operation of ***the utility's facilities and compliance with KRS Chapter 278 and 807 KAR Chapter 5[~~its facilities and compliance with the commission's rules and administrative regulations~~]*** and shall file these procedures with the commission for review.

(2) Upon receipt of a report of a potentially hazardous condition at ***a[~~any~~]*** utility facility, the utility shall inspect all portions of the system ***that[~~which~~]*** are the subject of the report.

(3) Appropriate records shall be kept by a utility to identify the inspection made, ***the date and time of inspection, the person conducting the inspection,*** deficiencies found***,*** and action taken to correct the deficiencies.

(4) Electric utility inspection. An electric utility shall make systematic inspections of its system in the manner ***established in this subsection[~~set out below~~]*** to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than ***established in this subsection[~~is set forth below~~]*** for various classes of facilities and types of inspection.

(a) As a part of operating procedure, each utility shall continuously monitor and inspect all production facilities regularly operated and manned.

(b) At intervals not to exceed six (6) months, the utility shall inspect:

1. Unmanned production facilities, including peaking units not on standby status, and all monitoring devices, for ***[~~any~~]***evidence of abnormality***;[~~.~~]***

2. Transmission switching stations ***if[~~where~~]*** the primary voltage is sixty-nine (69) KV or greater, for damage to or deterioration of components including structures, fences, gauges***, and*** monitoring devices***;[~~.~~]***

3. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, for leaks, condition of case, connections, temperature***,*** and overloading***; and[~~.~~]***

4. Electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage, ***[~~or~~]*** deterioration and vegetation management consistent with the utility's vegetation management practices.

(c) In addition to the requirements ***established in paragraph (b) of this subsection[~~set out in subsection 4(b) of this section~~]***, all electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors***,*** and supporting facilities shall be inspected from the ground for damage, deterioration***,*** and vegetation management consistent with the utility's vegetation management practices at intervals not to exceed:

1. Six (6) years for each electric line supported by a wood pole or other wood support structure***;*** or

2. Twelve (12) years for each electric line supported by a pole or other support structure constructed of steel or other nonwood material.

(d) At intervals not to exceed one (1) year, the utility shall inspect:

1. Production facilities maintained on a standby status. Except for remotely controlled facilities, all production facilities shall also be thoroughly inspected***; and[~~.~~]***

2. Distribution substations with primary voltage of fifteen (15) to sixty-nine (69) KV.

(e) At intervals not to exceed two (2) years, the utility shall inspect all electric facilities operating at voltages of less than sixty-nine (69) KV, to the point of service including insulators, conductors***, meters,*** and supporting facilities from the ground for damage, deterioration***,*** and vegetation management consistent with the utility's vegetation management practices.

(f) The utility shall inspect other facilities as follows***:[~~.~~]***

1. Utility buildings shall be inspected for compliance with safety codes at least annually***; and[~~.~~]***

2. Construction equipment shall be inspected for defects, wear***,*** and operational hazards at least quarterly.

(g) Aerial inspections shall not be used as the ***basis for compliance with paragraphs (b)1. through 3., support facilities provisions in (b)4., (d)1., and (f) of this subsection[~~sole basis for evidence of compliance with the commission's administrative regulations~~]***.

(5) Gas utility inspection. A gas utility shall make systematic inspections of its system to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is prescribed or recommended by the Department of Transportation, 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities.

(a) The following maximum time intervals ***shall be established[~~are prescribed~~]*** for certain inspections provided for in 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified, and for certain additional inspections not provided for in the code.

1. At intervals not to exceed every fifteen (15) months but at least once each calendar year, the utility shall inspect and visually examine:

a. Production wells, storage wells, and well equipment, including their exterior components***;[~~.~~]***

b. Pressure limiting stations, relief devices, pressure regulating stations, and vaults***; and[~~.~~]***

c. Accessibility of the curb box and valve on a service line.

2. At intervals not to exceed three (3) years, ***gas*** meters ***[~~using remote reading technology~~]*** shall be manually inspected and visually examined for proper working condition***[~~and the meter registration recorded~~]***[~~readings verified~~].

3. The utility shall inspect other facilities as follows:

a. Utility buildings shall be inspected for compliance with safety codes at least annually***; and[~~.~~]***

b. Construction equipment under the control of the utility shall be inspected for defects, wear***,*** and operational hazards at least quarterly.

(b) At intervals not to exceed the periodic meter test intervals, individual residential customer service regulators, vents***,*** and relief valve vents shall be checked for ***operable condition[~~satisfactory operation~~]***.

(c) At intervals not to exceed the periodic meter test intervals, the curb box and valve on the service line shall be inspected for operable condition.

(d) Aerial inspections shall not be used as the ***basis for compliance with paragraphs (a) through (c) of this subsection[~~sole basis for evidence of compliance with the commission's administrative regulations~~]***.

(6) Water utility inspections. Each water utility shall make systematic inspections of its system ***as established in paragraphs (a) through (c) of this subsection[~~in the manner set out below~~]*** to insure that the commission's safety requirements are being met.

These inspections shall be made as often as necessary but not less frequently than ***as established in paragraphs (a) through (c) of this subsection[~~is set forth below~~]*** for various classes of facilities and types of inspection.

(a) The utility shall annually inspect all structures pertaining to source of supply for their safety and physical and structural integrity, including dams, intakes, and traveling screens. The utility shall semiannually inspect supply wells, their motors and structures, including electric power wiring and controls for proper and safe operation***;[~~.~~]***

(b) The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity***,*** and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water storage facilities, including electric power wiring and controls; ***and*** hydrants, mains, meters, meter settings and valves***; and[~~.~~]***

(c) The utility shall monthly inspect construction equipment and vehicles for defects, wear, operational hazards, lubrication, and safety features.

(7) Telephone utility inspection. Each telephone utility shall make systematic inspections of its system ***as established in paragraphs (a) through (f) of this subsection[~~in the manner set out below~~]*** to insure that the commission's safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than ***as established in paragraphs (a) through (f) of this subsection[~~is set forth below~~]*** for various classes of facilities and types of inspection.

(a) The utility shall inspect aerial plant for electrical hazards, proper clearance for electric clearances of facilities, vegetation management consistent with the utility's vegetation management practices***,*** and climbing safety every two (2) years***;[~~.~~]***

(b) The utility shall inspect underground plant for presence of gas, proper clearance from electric facilities***,*** and safe working conditions at least annually***;[~~.~~]***

(c) The utility shall inspect utility-provided station equipment and connections for external electrical hazards, damaged instruments or wiring***, and*** appropriate protection from lightning and safe location of equipment and wiring when on a customer's premises***;[~~.~~]***

(d) The utility shall inspect utility buildings for compliance with safety codes at least annually***;[~~.~~]***

(e) The utility shall inspect construction equipment for defects, wear***,*** and operational hazards at least quarterly***; and[~~.~~]***

(f) Aerial inspections shall not be used as the ***basis for compliance with this subsection[~~sole basis for evidence of compliance with commission administrative regulations~~]***.

(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner ***established[~~set out~~]*** in 807 KAR 5:071 to ensure that the commission's safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than ***established[~~is set out~~]*** in 807 KAR 5:071.

Section 27. Reporting of Accidents, Property Damage***,*** or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of ***a[~~any~~]*** utility related accident ***that[~~which~~]*** results in:

(a) Death***[~~;~~]*** or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization;

(b) Actual or potential property damage of $25,000 or more; or

(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less.

(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident. For good cause shown, the executive director of the commission, ***shall[~~may~~]***, upon application in writing, allow a reasonable extension of time for submission of this report.

(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.

Section 28. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission ***shall[~~may~~]*** permit deviations from this administrative regulation.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Annual Financial and Statistical Reports:

1. "FERC Form 1 – Annual Report of Major Electric Utilities, Licensees and Others", March 2007;

2. "Annual Reporting Form for Rural Electric Cooperative Corporations", July 2012;

3. "FERC Form 2 – Annual Report of Major Natural Gas Companies", December 2007;

4. "Annual Reporting Form for Class C and D Gas Utilities", August 2005;

5. "Annual Reporting Form for Local Exchange Carriers", August 2005;

6. "Annual Reporting Form for Local Exchange Carriers – Kentucky Operations Only", August 2004;

7. "Annual Reporting Form for Water Company – Class A & B", July 2012;

8. "Annual Reporting Form for Water Company – Class C", July 2012;

9. "Annual Reporting Form for Water Districts/Water Associations – Class A & B", July 2012;

10. "Annual Reporting Form for Water Districts/Water Associations – Class C", July 2012; ***and***

11. "Annual Reporting Form for Sewer Utilities", September 2005;

(b) Quarterly Meter Reports:

1. "Quarterly Meter Report-Electric", August 2011;

2. "Quarterly Meter Report-Water", July 2012; ***and***

3. "Quarterly Meter Report-Gas", July 2007;

(c) Non-payment Disconnection/Reconnection Reports:

1. "Water Utility-Non-Payment Disconnection/Reconnection Report", February 2012;

2. "Electric Utility-Non-Payment Disconnection/Reconnection Report", September 2000; ***and***

3. "Gas Utility Non-Payment Disconnection/Reconnection Report" September 2000;

(d) ***"Application for Appointment of Meter Testers", August 2012; and***

(e) Gross Annual Operating Revenue Reports:

1. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business", December 2010;

2. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Electric Utilities", October 2012;

3. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Long Distance Carriers and Operator Services", September 2010;

4. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Paging and Cellular", September 2010; and

5. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Local Exchange Carriers and Competitive Local Exchange Carriers", September 2010.[~~Application for Appointment of Meter Tester~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. ***This material may also be obtained at[~~, or through~~]*** the commission's Web site at http://psc.ky.gov***[~~/~~]***.[~~Section 1. Definitions. (1) "Utility" means a utility as defined in KRS 278.010(3).~~

~~(2) "Customer" means any person, firm, corporation or body politic applying for or receiving service from any utility.~~

~~Section 2. General Provisions. (1) The adoption of administrative regulations by the commission shall not preclude the commission from altering or amending the same in whole or in part, or from requiring any other or additional service, equipment, facility, or standards, either upon request, or upon its own motion, or upon the application of the utility. No administrative regulation of the commission shall in any way relieve a utility from any of its duties under the laws of Kentucky.~~

~~(2) Any reference to standards or codes in commission administrative regulations shall not prohibit utilities employing competent~~

~~engineers from continuing or initiating experimental work and installations which tend to improve, decrease the cost of, or increase the safety of their service.~~

~~Section 3. Reports. (1) Financial and statistical reports. Every utility shall file annually a financial and statistical report upon forms to be furnished by the commission. This report shall be based upon the accounts set up in conformity with the uniform system of accounts for utilities. This report shall be filed on or before March 31, each year, for the preceding calendar year. The forms for this report are hereby incorporated by reference, and may be obtained at the commission's offices at 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time..For good cause shown, the executive director of the commission may, upon application in writing, allow a reasonable extension of time for such filing.~~

~~(2) Report of meters, customers and refunds. Every gas, electric and water utility shall make periodic reports on forms prescribed by the commission, of meter tests, number of customers and amount of refunds. These forms are hereby incorporated by reference, and may be obtained at the commission's offices at 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time.~~

~~(3) Report of terminations for nonpayment of bills. Each electric and gas utility shall, report annually the number of residential accounts terminated for nonpayment. These reports shall be filed no later than August 15 and shall cover the period ending June 30.~~

~~(4) Other reports. Every utility shall make such other reports as the commission may at its discretion from time to time require.~~

~~(5) Record and report retention. All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified.~~

~~(6) Transmittal letter. All reports shall be accompanied by two (2) copies of a transmittal letter describing the report being furnished.~~

~~Section 4. Service Information. (1) The utility shall, on request, give its customers or prospective customers such information as is reasonably possible in order that they may secure safe, efficient and continuous service. The utility shall inform its customers of any change made or proposed in the character of its service which might affect the efficiency, safety, or continuity of operation.~~

~~(2) Prior to making any substantial change in the character of the service furnished, which would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, the utility shall obtain the approval of the commission. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.~~

~~(3) The utility shall inform each applicant for service of each type, class and character of service available at his location.~~

~~Section 5. Special Rules or Requirements. (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application.~~

~~(2) A customer who has complied with commission administrative regulations shall not be denied service for failure to comply with the utility's rules which have not been made effective in the manner prescribed by the commission.~~

~~(3) Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility. No utility shall require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service. The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with the applicable extension administrative regulation.~~

~~Section 6. Billings, Meter Readings and Information. (1) Information on bills. Each bill for utility service issued periodically by a utility shall clearly show the following, if applicable: class of service; present and last preceding meter readings; date of the present reading; number of units consumed; meter constant, if any; net amount for service rendered; all taxes; any adjustments; and the gross amount of the bill. The date after which a penalty may apply to the gross amount shall be indicated. Estimated or calculated bills shall be distinctly marked as such. The rate schedule under which the bill is computed shall be furnished under one (1) of the following methods:~~

~~(a) By printing it on the bill.~~

~~(b) By publishing it in a newspaper of general circulation once each year.~~

~~(c) By mailing it to each customer once each year.~~

~~(d) By providing a place on each bill where a customer may indicate his desire for a copy of the applicable rates. The utility shall mail the customer a copy by return first class mail.~~

~~(2) Flat rates. Flat rates for unmetered service shall approximate as closely as possible the utility's rates for metered service. The rate schedule shall clearly set out the basis upon which consumption is estimated.~~

~~(3) Bill format. Each utility shall include the billing form to be used by it, or its contents, in its tariffed rules.~~

~~(4) Meter readings. Registration of each meter shall read in the same units as used for billing unless a conversion factor is shown on the billing form.~~

~~(5) Frequency of meter reading. Each utility, except if prevented by reasons beyond its control, shall read customer meters at least quarterly, except that each utility using customer-read meter information shall read each revenue related meter on its system at least once during each calendar year. Records shall be kept by the utility to insure that this information is available to commission staff and any customer requesting this information. If, due to reasons beyond its control, a utility is unable to read a meter in accordance with this subsection, the utility shall record the date and time the attempt was made, if applicable, and the reason the utility was unable to read the meter.~~

~~Section 7. Deposits. (1) Determination of deposits. A utility may require from any customer a minimum cash deposit or other guaranty to secure payment of bills, except from those customers qualifying for service reconnection under Section 15 of this administrative regulation. The method of determining the amount of a cash deposit may differ between classes of customers, but shall be uniform for all customers within the same class. The amount of a cash deposit shall be determined by one (1) of the following methods:~~

~~(a) Calculated deposits. If actual usage data is available for the customer at the same or similar premises, the deposit amount shall be calculated using the customer's average bill for the most recent twelve (12) month period. If actual usage data is not available, the deposit amount shall be based on the average bills of similar customers and premises in the system. Deposit amounts shall not exceed two-twelfths (2/12) of the customer's actual or estimated annual bill where bills are rendered monthly, three-twelfths (3/12) where bills are rendered bimonthly, or four-twelfths (4/12) where bills are rendered quarterly.~~

~~(b) Equal deposits. The utility may establish an equal deposit amount for each class based on the average bill of customers in that class. Deposit amounts shall not exceed two-twelfths (2/12) of the average bill of customers in the class where bills are rendered monthly, three-twelfths (3/12) where bills are rendered bimonthly, or four-twelfths (4/12) where bills are rendered quarterly.~~

~~(c) Recalculation of deposits. If the utility will or may retain either an equal or calculated deposit for more than eighteen (18) months, it shall notify customers in writing that, at the customer's request, the deposit will be recalculated every eighteen (18) months based on actual usage of the customer. The notice of deposit recalculation shall be included either on the customer's application for service or on the receipt of deposit, or may be included annually with or on customer bills. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars for residential customers, or by more than ten (10) percent for nonresidential customers, from the deposit calculated on actual usage, then the utility shall refund any over-collection and may collect any underpayment. Refunds shall be made either by check or by credit to the customer's bill, except that a utility shall not be required to refund any excess deposit if the customer's bill is delinquent at the time of recalculation.~~

~~(2) Waiver of deposits. Deposits may be waived at the discretion of the utility in accordance with its currently effective tariff based upon a customer's showing of satisfactory credit and payment history.~~

~~(3) Additional deposit requirement. If a deposit has been~~

~~waived, as allowed in subsection (2) of this section, or has been returned and the customer fails to maintain a satisfactory payment record as defined in the utility's currently effective tariff, the utility may require that a deposit be made. If substantial change in usage has occurred, the utility may require that an additional deposit be made. No additional or subsequent deposit shall be required of residential customers whose payment record is satisfactory, unless the customer's classification of service changes, except as provided in subsection (1)(c) of this section.~~

~~(4) Receipt of deposit. The utility shall issue to every customer from whom a deposit is collected a receipt of deposit. The receipt shall show the name of the customer, location of the service or customer account number, date, and amount of deposit. If the notice of recalculation described in subsection (1)(c) of this section is not included in the utility's application for service or mailed with customer bills, the receipt of deposit shall contain the notification. If deposit amounts change, the utility shall issue a new receipt of deposit to the customer.~~

~~(5) Deposits as a condition of service. Except as otherwise provided by Section 15 of this administrative regulation, customer service may be refused or discontinued pursuant to Section 14 of this administrative regulation if payment of requested deposits is not made.~~

~~(6) Interest on deposits. Interest shall accrue on all deposits at the rate prescribed by law, beginning on the date of deposit. Interest accrued shall be refunded to the customer or credited to the customer's bill on an annual basis, except that a utility shall not be required to refund or credit interest on deposits if the customer's bill is delinquent on the anniversary of the deposit date. All interest that has accrued as of the effective date of this administrative regulation shall be refunded or credited to the customer's bill on the first anniversary of the deposit date after the effective date of this administrative regulation. If interest is paid or credited to the customer's bill prior to twelve (12) months from the date of deposit, the payment or credit shall be on a prorated basis. Upon termination of service, the deposit, any principal amounts, and interest earned and owing shall be credited to the final bill with any remainder refunded to the customer.~~

~~(7) Tariff requirements. Each utility which chooses to require deposits shall establish and include in its filed tariff the deposit policy to be utilized. This policy shall include:~~

~~(a) The method by which deposit amounts will be determined for each customer class;~~

~~(b) Standard criteria for determining when a deposit will be required or waived;~~

~~(c) The deposit amount for each customer class if the method in subsection (1)(b) of this section is used;~~

~~(d) The period of time the utility will retain the deposit, or the conditions under which the utility will refund the deposit, or both if applicable;~~

~~(e) The manner in which interest on deposits will be calculated and accrued and refunded or credited to customers' bills.~~

~~Section 8. Special Charges. (1) A utility may make special nonrecurring charges to recover customer-specific costs incurred which would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken. Any utility desiring to establish or change any special nonrecurring charge shall apply for commission approval of such charge in accordance with the provisions of 807 KAR 5:011, Section 10.~~

~~(2) Special charges shall be included in the utility's tariff and applied uniformly throughout the area served by the utility. They shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.~~

~~(3) Special charges may include, but are not limited to:~~

~~(a) Turn-on charge. A turn-on charge may be assessed for a new service turn on, seasonal turn on or temporary service. A turn-on charge shall not be made for initial installation of service where a tap fee is applicable.~~

~~(b) Reconnect charge. A reconnect charge may be assessed to reconnect a service which has been terminated for nonpayment of bills or violation of the utility's rules or commission administrative regulations. Customers qualifying for service reconnection under Section 15 of this administrative regulation shall be exempt from reconnect charges.~~

~~(c) Termination or field collection charge. A charge may be assessed when a utility representative makes a trip to the premises of a customer for the purpose of terminating service. The charge may be assessed if the utility representative actually terminates service or if, in the course of the trip, the customer pays the delinquent bill to avoid termination. The charge may also be made if the utility representative agrees to delay termination based on the customer's agreement to pay the delinquent bill by a specific date. The utility may make a field collection charge only once in any billing period.~~

~~(d) Special meter reading charge. This charge may be assessed when a customer requests that a meter be reread, and the second reading shows the original reading was correct. No charge shall be assessed if the original reading was incorrect. This charge may also be assessed when a customer who reads his own meter fails to read the meter for three (3) consecutive months, and it is necessary for a utility representative to make a trip to read the meter.~~

~~(e) Meter resetting charge. A charge may be assessed for resetting a meter if the meter has been removed at the customer's request.~~

~~(f) Meter test charge. This charge may be assessed if a customer requests the meter be tested pursuant to Section 18 of this administrative regulation, and the tests show the meter is not more than two (2) percent fast. No charge shall be made if the test shows the meter is more than two (2) percent fast.~~

~~(g) Returned check charge. A returned check charge may be assessed if a check accepted for payment of a utility bill is not honored by the customer's financial institution.~~

~~(h) Late payment penalty. A penalty may be assessed if a customer fails to pay a bill for services by the due date shown on the customer's bill. The penalty may be assessed only once on any bill for rendered services. Any payment received shall first be applied to the bill for service rendered. Additional penalty charges shall not be assessed on unpaid penalty charges.~~

~~Section 9. Customer Complaints to the Utility. Upon complaint to the utility by a customer at the utility's office, by telephone or in writing, the utility shall make a prompt and complete investigation and advise the complainant of its findings. The utility shall keep a record of all written complaints concerning its service. This record shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition of the complaint. Records shall be maintained for two (2) years from the date of resolution of the complaint. If a written complaint or a complaint made in person at the utility's office is not resolved, the utility shall provide written notice to the complainant of his right to file a complaint with the commission, and shall provide him with the address and telephone number of the commission. If a telephonic complaint is not resolved, the utility shall provide at least oral notice to the complainant of his right to file a complaint with the commission and the address and telephone number of the commission.~~

~~Section 10. Bill Adjustment for Gas, Electric and Water Utilities. (1) If upon periodic test, request test, or complaint test a meter in service is found to be more than two (2) percent fast, additional tests shall be made to determine the average error of the meter. Said tests shall be made in accordance with commission administrative regulations applicable to the type of meter involved.~~

~~(2) If test results on a customer's meter show an average error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for any other reason, except in an instance where a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility shall immediately determine the period during which the error has existed, and shall recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer. The utility shall readjust the account based upon the period during which the error is known to have existed. If the period during which the error existed cannot be determined with reasonable precision, the time period shall be estimated using such data as elapsed time since the last meter test, if applicable, and historical usage data for the customer. If that data is not available, the average usage of similar customer loads~~

~~shall be used for comparison purposes in calculating the time period. If the customer and the utility are unable to agree on an estimate of the time period during which the error existed, the commission shall determine the issue. In all instances of customer overbilling, the customer's account shall be credited or the overbilled amount refunded at the discretion of the customer within thirty (30) days after final meter test results. A utility shall not require customer repayment of any underbilling to be made over a period shorter than a period coextensive with the underbilling.~~

~~(3) Monitoring usage. Each utility shall monitor customers' usage at least annually according to procedures which shall be included in its tariff on file with the commission. The procedures shall be designed to draw the utility's attention to unusual deviations in a customer's usage and shall provide for reasonable means by which the utility can determine the reasons for the unusual deviation. If a customer's usage is unduly high and the deviation is not otherwise explained, the utility shall test the customer's meter to determine whether the meter shows an average error greater than two (2) percent fast or slow.~~

~~(4) Usage investigation. If the utility's procedure for monitoring usage indicates that an investigation of a customer's usage is necessary, the utility shall notify the customer in writing either during or immediately after the investigation of the reasons for the investigation, and of the findings of the investigation. If knowledge of a serious situation requires more expeditious notice, the utility shall notify the customer by the most expedient means available.~~

~~(5) Customer notification. If a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:~~

~~On _____, 19___, the meter bearing identification No. ____ installed in your building located at _____ (Street and Number) in _____ (city) was tested at _____ (on premises or elsewhere) and found to register _____ (percent fast or slow). The meter was tested on _____ (Periodic, Request, Complaint) test.~~

~~Based upon this we herewith _____ (charge or credit) with the sum of $_____, which amount has been noted on your regular bill. If you desire a cash refund, rather than a credit to your account, of any amount overbilled, you must notify this office in writing within seven (7) days of the date of this notice.~~

~~(6) Customer accounts shall be considered to be current while a dispute is pending pursuant to this section, as long as a customer continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads, and stays current on subsequent bills.~~

~~Section 11. Status of Customer Accounts During Billing Dispute. With respect to any billing dispute to which Section 10 of this administrative regulation does not apply, customer accounts shall be considered to be current while the dispute is pending as long as a customer continues to make undisputed payments and stays current on subsequent bills.~~

~~Section 12. Customer's Request for Termination of Service. (1) Any customer desiring service terminated or changed from one address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, provided such notice does not violate contractual obligations or tariff provisions. The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides reasonable access to the meter during the notice period. If the customer notifies the utility of his request for termination by telephone, the burden of proof is on the customer to prove that service termination was requested if a dispute arises.~~

~~(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant a reconnect fee set out in its filed tariff.~~

~~(3) Any utility desiring to establish a termination or reconnection charge under the provisions of subsection (2) of this section, shall apply for commission approval of such charge in accordance with the provisions of 807 KAR 5:011, Section 10.~~

~~Section 13. Utility Customer Relations. (1) A utility shall post and maintain regular business hours and provide representatives available to assist its customers.~~

~~(a) Available telephone numbers. Each utility shall maintain a telephone, shall publish the telephone number in all service areas, and shall permit all customers to contact the utility's designated representative without charge.~~

~~(b) Designated representatives. Each utility shall designate at least one (1) representative to be available to answer customer questions, resolve disputes and negotiate partial payment plans at the utility's office. The designated representative shall be knowledgeable of the commission's administrative regulations regarding customer bills and service and shall be authorized to negotiate and accept partial payment plans.~~

~~1. Each major gas or electric utility (as defined by the Uniform System of Accounts) and each water and sewer utility having annual operating revenues of $250,000 or more shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, five (5) days per week, excluding holidays.~~

~~2. Each nonmajor gas or electric utility (as defined by the Uniform System of Accounts) and each water or sewer utility having annual operating revenues of less than $250,000 shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) day per week. Additionally, during the months of November through March, each previously defined nonmajor utility providing gas or electric service shall make available the designated representative during the utility's established working hours not fewer than five (5) days per week.~~

~~(c) Display of customer rights. Each utility shall prominently display in each office in which payment is received a summary, to be prepared and provided by the commission, of the customer's rights under this section and Section 15 of this administrative regulation. If a customer indicates to any utility personnel that he is experiencing difficulty in paying a current utility bill, that employee shall refer the customer to the designated representative for explanation of the customer's rights.~~

~~(d) Utility personnel training. The chief operating officer of each electric and gas utility providing service to residential customers shall be required to certify each year the training of utility personnel assigned to counsel persons presenting themselves for utility service under the provisions of this section. Training is hereby defined as an annual review of commission administrative regulations and policies regarding winter hardship and disconnect administrative regulations, Cabinet for Health and Family Services policy and programs for issuing certificates of need, and the utility's policies regarding collection, arrears repayment plans, budget billing procedures, and weather/health disconnect policies. Certification is defined as written notice to the commission by no later than October 31 of each year identifying the personnel trained, the date training occurred, and that the training met the requirements of this section.~~

~~(2) Partial payment plans. Each utility shall negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay as provided in Section 14 of this administrative regulation, except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject to the conditions in this section and Section 14 of this administrative regulation. Partial payment plans which extend for a period longer than thirty (30) days shall be in writing and shall advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.~~

~~(a) Budget payment plans for gas and electric utilities. Each gas and electric utility shall develop and offer to its residential customers a budget payment plan based on historical or estimated usage whereby a customer may elect to pay a fixed amount each month in lieu of monthly billings based on actual usage. Under such plans, utilities shall issue bills which adjust accounts so as to bring each participating customer current once each twelve (12) month period. The customer's account may be adjusted at the end of the twelve (12) month period or through a series of levelized adjustments on a monthly basis if usage indicates that the account will not be current upon payment of the last budget amount. Budget payment plans shall be offered to residential customers but may be~~

~~extended to other classes of customers. The provisions of the budget plan shall be included in the utility's tariffed rules. The utility shall provide information to its customers regarding the availability of such budget payment plans.~~

~~(b) Partial payment plans for customers with medical certificates or certificates of need. For customers presenting certificates under the provisions of Sections 14(3) and 15 of this administrative regulation, gas and electric utilities shall negotiate partial payment plans based upon the customer's ability to pay, requiring accounts to become current not later than the following October 15. Such plans may include, but are not limited to, budget payment plans and plans that defer payment of a portion of the arrearage until after the end of the heating season through a schedule of unequal payments.~~

~~(3) Utility inspections of service conditions prior to providing service. Each electric, gas, water and sewer utility shall inspect the condition of the meter and service connections before making service connections to a new customer so that prior or fraudulent use of the facilities will not be attributed to the new customer. The new customer shall be afforded the opportunity to be present at such inspections. The utility shall not be required to render service to any customer until any defects in the customer-owned portion of the service facilities have been corrected.~~

~~(4) Prompt connection of service. Except as provided in Section 15 of this administrative regulation, the utility shall reconnect existing service within twenty-four (24) hours, and shall install and connect new service within seventy-two (72) hours, when the cause for refusal or discontinuance of service has been corrected and the utility's tariffed rules and commission administrative regulations have been met.~~

~~(5) Advance termination notice. When advance termination notice is required, the termination notice shall be mailed or otherwise delivered to the last known address of the customer. The termination notice shall be in writing, distinguishable and separate from any bill. The termination notice shall plainly state the reason for termination, that the termination date will not be affected by receipt of any subsequent bill, and that the customer has the right to dispute the reasons for termination. The termination notice shall also comply with the applicable requirements of Section 14 of this administrative regulation.~~

~~Section 14. Refusal or Termination of Service. (1) A utility may refuse or terminate service to a customer only under the following conditions except as provided in subsections (2) and (3) of this section:~~

~~(a) For noncompliance with the utility's tariffed rules or commission administrative regulations. A utility may terminate service for failure to comply with applicable tariffed rules or commission administrative regulations pertaining to that service. However, no utility shall terminate or refuse service to any customer for noncompliance with its tariffed rules or commission administrative regulations without first having made a reasonable effort to obtain customer compliance. After such effort by the utility, service may be terminated or refused only after the customer has been given at least ten (10) days written termination notice pursuant to Section 13(5) of this administrative regulation.~~

~~(b) For dangerous conditions. If a dangerous condition relating to the utility's service which could subject any person to imminent harm or result in substantial damage to the property of the utility or others is found to exist on the customer's premises, the service shall be refused or terminated without advance notice. The utility shall notify the customer immediately in writing and, if possible, orally of the reasons for the termination or refusal. Such notice shall be recorded by the utility and shall include the corrective action to be taken by the customer or utility before service can be restored or provided. However, if the dangerous condition, such as gas piping or a gas-fired appliance, can be effectively isolated or secured from the rest of the system, the utility need discontinue service only to the affected piping or appliance.~~

~~(c) For refusal of access. When a customer refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance or removal of utility property, the utility may terminate or refuse service. Such action shall be taken only when corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has been given at least ten (10) days' written notice of termination pursuant to Section 13(5) of this administrative regulation.~~

~~(d) For outstanding indebtedness. Except as provided in Section 15 of this administrative regulation, a utility shall not be required to furnish new service to any customer who is indebted to the utility for service furnished or other tariffed charges until that customer has paid his indebtedness.~~

~~(e) For noncompliance with state, local or other codes. A utility may refuse or terminate service to a customer if the customer does not comply with state, municipal or other codes, rules and administrative regulations applying to such service. A utility may terminate service pursuant to this subsection only after ten (10) days' written notice is provided pursuant to Section 13(5) of this administrative regulation, unless ordered to terminate immediately by a governmental official.~~

~~(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery; however, no utility shall terminate service to any customer for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 13(5) of this administrative regulation.~~

~~1. Termination notice requirements for electric or gas service. Each electric or gas utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer ten (10) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty-seven (27) days after the mailing date of the original unpaid bill. The termination notice to residential customers shall include written notification to the customer of the existence of local, state and federal programs providing for the payment of utility bills under certain conditions, and of the address and telephone number of the Department for Social Insurance of the Cabinet for Health and Family Services to contact for possible assistance.~~

~~2. Termination notice requirements for water, sewer, or telephone service. Each water, sewer, or telephone utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer five (5) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty (20) days after the mailing date of the original unpaid bill.~~

~~3. The termination notice requirements of this subsection shall not apply if termination notice requirements to a particular customer or customers are otherwise dictated by the terms of a special contract between the utility and customer which has been approved by the commission.~~

~~(g) For illegal use or theft of service. A utility may terminate service to a customer without advance notice if it has evidence that a customer has obtained unauthorized service by illegal use or theft. Within twenty-four (24) hours after such termination, the utility shall send written notification to the customer of the reasons for termination or refusal of service upon which the utility relies, and of the customer's right to challenge the termination by filing a formal complaint with the commission. This right of termination is separate from and in addition to any other legal remedies which the utility may pursue for illegal use or theft of service. The utility shall not be required to restore service until the customer has complied with all tariffed rules of the utility and laws and administrative regulations of the commission.~~

~~(2) A utility shall not terminate service to a customer if the following conditions exist:~~

~~(a) If payment for services is made. If, following receipt of a termination notice for nonpayment but prior to the actual termination of service, there is delivered to the utility office payment of the amount in arrears, service shall not be terminated.~~

~~(b) If a payment agreement is in effect. Service shall not be terminated for nonpayment if the customer and the utility have entered into a partial payment plan in accordance with Section 13 of this administrative regulation and the customer is meeting the requirements of the plan.~~

~~(c) If a medical certificate is presented. Service shall not be terminated for thirty (30) days beyond the termination date if a physician, registered nurse or public health officer certifies in writing that termination of service will aggravate a debilitating illness or~~

~~infirmity on the affected premises. A utility may refuse to grant consecutive extensions for medical certificates past the original thirty (30) days unless the certificate is accompanied by an agreed partial payment plan in accordance with Section 13 of this administrative regulation. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents to the utility a medical certificate certified in writing by a physician, registered nurse or public health officer.~~

~~(3) A gas or electric utility shall not terminate service for thirty (30) days beyond the termination date if the Kentucky Cabinet for Human Resources (or its designee) certifies in writing that the customer is eligible for the cabinet's energy assistance program or household income is at or below 130 percent of the poverty level, and the customer presents such certificate to the utility. Customers eligible for such certification from the Cabinet for Human Resources shall have been issued a termination notice between November 1 and March 31. Certificates shall be presented to the utility during the initial ten (10) day termination notice period. As a condition of the thirty (30) day extension, the customer shall exhibit good faith in paying his indebtedness by making a present payment in accordance with his ability to do so. In addition, the customer shall agree to a repayment plan in accordance with Section 13 of this administrative regulation which will permit the customer to become current in the payment of his bill as soon as possible but not later than October 15. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents a certificate to the utility certified by the Kentucky Cabinet for Health and Family Services (or its designee) that the customer is eligible for the cabinet's Energy Assistance Program or whose household income is at or below 130 percent of the poverty level.~~

~~Section 15. Winter Hardship Reconnection. (1) Notwithstanding the provisions of Section 13(4) of this administrative regulation to the contrary, an electric or gas utility shall reconnect service to a residential customer who has been disconnected for nonpayment of bills pursuant to Section 14(1)(f) of this administrative regulation prior to application for reconnection, and who applies for such reconnection during the months from November through March if the customer or his agent:~~

~~(a) Presents a certificate of need from the Cabinet for Health and Family Services, Department for Social Insurance, including a certification that a referral for weatherization services has been made in accordance with subsection (3) of this section;~~

~~(b) Pays one-third (1/3) of his outstanding bill or $200, whichever is less; and~~

~~(c) Agrees to a repayment schedule which would permit the customer to become current in the payment of his electric or gas bill as soon as possible but no later than October 15. However, if, at the time of application for reconnection, the customer has an outstanding bill in excess of $600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with his ability to pay, then such plan shall be accepted. In addition to payment of current charges, repayment schedules shall provide an option to the customer to select either one (1) payment of arrearages per month or more than one (1) payment of arrearages per month.~~

~~(d) A utility shall not require a new deposit from a customer whose service is reconnected due to paragraphs (a), (b) or (c) of this subsection.~~

~~(2) Certificate of need for reconnection. Federal and statewide energy assistance programs are administered by the Kentucky Cabinet for Health and Family Services, Department for Social Insurance. A customer who is eligible for energy assistance under the department's guidelines or is certified as being in genuine financial need, which is defined as any household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the department to be used in obtaining a service reconnection from the utility.~~

~~(3) Weatherization program. Customers obtaining a certificate of need under this administrative regulation shall agree to accept referral to and utilize weatherization services which are administered by the Cabinet for Health and Family Services. The provision and acceptance of weatherization services is contingent on the availability of funds and other program guidelines. Weatherization services include, but are not limited to, weather stripping, insulation and caulking.~~

~~(4) Customers who are current in their payment plans under subsection 1(c) of this section shall not be disconnected.~~

~~Section 16. Meter Testing. (1) All electric, gas and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically set out under 807 KAR 5:022, 807 KAR 5:041 and 807 KAR 5:066. Before being installed for use by any customer, all electric, gas and water meters shall be tested and in good working order and shall be adjusted as close to the optimum operating tolerance as possible, as more specifically set out in 807 KAR 5:022, Section 8(3)(a), 807 KAR 5:041, Section 17(1)(a)-(c) and 807 KAR 5:066, Section 15(2)(a)-(b).~~

~~(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for that purpose. Each utility having tests made by another agency or utility shall notify the commission of those arrangements in detail to include make, type and serial number of standards used to make the checks or tests.~~

~~(3) No utility shall place in service any basic measurement standard required by these rules unless the calibration has been approved by the commission. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring commission approval of the calibration.~~

~~(4) Each electric, gas and water utility or agency doing meter testing for a utility shall have in its employ meter testers certified by the commission. These certified meter testers shall perform tests as necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by commission administrative regulations.~~

~~(5) A utility or agency desiring to have its employees certified as meter testers shall submit the names of applicants on the commission's form entitled "Application for Appointment of Meter Testers", and after compliance with the requirements noted in this form, the applicant may be certified as a meter tester and furnished with a card authorizing him to perform meter tests. This form is hereby incorporated by reference, and may be obtained at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, on Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time.~~

~~(6) A utility or agency may employ apprentices in training for certification as meter testers. The apprentice period shall be a minimum of six (6) months, after which the meter tester apprentice shall comply with subsection (5) of this section. All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.~~

~~Section 17. Meter Test Records. (1)(a) A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meter tester. Such record shall include: Information to identify the unit and its location; date of tests; reason for such tests; readings before and after test; statement of "as found" and "as left" accuracies sufficiently complete to permit checking of calculations employed; notations showing that all required checks have been made; statement of repairs made, if any; identifying number of the meter; type and capacity of the meter; and the meter constant.~~

~~(b) The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years.~~

~~(2) Historical records. Each utility shall keep numerically arranged and properly classified records for each meter owned, used and inventoried by the utility. The identification number, date of purchase, name of manufacturer, serial number, type, rating, and name and address of each customer on whose premises the meter has been in service with date of installation and removal shall be included in the records. These records shall also contain condensed information concerning all tests and adjustments including dates and general results of such adjustments. The records shall reflect the date of the last test and indicate the proper date for the next periodic test required by the applicable commission administrative regulation.~~

~~(3) Sealing of meters. Upon completion of adjustment and test of any meter pursuant to commission administrative regulations,~~

~~the utility shall affix to the meter a suitable seal in such a manner that adjustments or registration of the meter cannot be altered without breaking the seal.~~

~~(4) A utility may store any or all of the meter test and historical data described or required in subsections (1) and (2) of this section in a computer storage and retrieval system upon notification to the commission. If a utility elects to use a computer storage and retrieval system, a back-up copy of the identical information shall be retained.~~

~~Section 18. Request Tests. (1) Each utility shall make a test of any meter upon written request of any customer if the request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity to be present at the request tests. If the tests show that the meter was not more than two (2) percent fast, the utility may make a reasonable charge for the test. The amount of the charge shall be approved by the commission and set out in the utility's filed tariff.~~

~~(2) After having first obtained a test from the utility, any customer of the utility may request a meter test by the commission upon written application. Such request shall not be made more frequently on one (1) meter than once each twelve (12) months.~~

~~Section 19. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation, replacement or removal of its property at the time service is to be terminated. Any employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, or show a badge or other identification which will identify him as an employee of the utility.~~

~~Section 20. Pole Identification. (1) Each utility owning poles or other structures supporting its wires, shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every such structure can be readily determined. For the purpose of this rule the term "built-up community" shall mean urban areas and those areas immediately adjacent thereto.~~

~~(2) Identification marks may be of any type but shall be of a permanent material and shall be easily read from the ground at a distance of six (6) feet from the structure.~~

~~(3) If utilities' structures are located outside of a built-up community, at least every tenth structure shall be marked as set forth in subsection (2) of this section.~~

~~(4) All junction structures shall bear the identification mark and structure number of the owner.~~

~~(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.~~

~~(6) Each utility shall either number its structures and maintain a numbering system or use some other method of identification so that each structure in the system can be easily identified.~~

~~Section 21. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities supporting its wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to poles and to use facilities, as customers, for transmission of signals to their patrons.~~

~~(2) The tariffs of the utility shall set forth the rates, terms and conditions under which the utility's facilities may be used.~~

~~(3) With respect to a complaint before the commission in any individual matter concerning cable television pole attachments final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.~~

~~Section 22. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:~~

~~(a) Operating districts.~~

~~(b) Rate districts.~~

~~(c) Communities served.~~

~~(d) Location and size of transmission lines, distribution lines and service connections.~~

~~(e) Location and layout of all principal items of plant.~~

~~(f) Date of construction of all items of plant by year and month.~~

~~(2) In each division or district office there shall be available information relative to the utility's system that will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.~~

~~(3) In lieu of showing the above information on maps, a card record or other suitable means may be used. For all construction the records shall also show the date of construction by month and year.~~

~~Section 23. Location of Records. All records required by commission administrative regulations shall be kept in the office of the utility and shall be made available to representatives, agents or staff of the commission upon reasonable notice at all reasonable hours.~~

~~Section 24. Safety Program. Each utility shall adopt and execute a safety program, appropriate to the size and type of its operations. At a minimum, the safety program shall:~~

~~(1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees.~~

~~(2) Instruct employees in safe methods of performing their work~~

~~(3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.~~

~~Section 25. Inspection of Systems. (1) Each utility shall adopt inspection procedures to assure safe and adequate operation of its facilities and compliance with commission rules and administrative regulations These procedures shall be filed with the commission for review.~~

~~(2) Upon receipt of a report of a potentially hazardous condition at any utility facility made by a qualified employee, public official, or customer, the utility shall inspect all portions of the system which are the subject of the report.~~

~~(3) Appropriate records shall be kept by each utility to identify the inspection made, deficiencies found and action taken to correct the deficiencies.~~

~~(4) Electric utility inspection. Each electric utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.~~

~~(a) As a part of operating procedure, each utility shall continuously monitor and inspect all production facilities regularly operated and manned.~~

~~(b) At intervals not to exceed six (6) months, the utility shall inspect:~~

~~1. Unmanned production facilities, including peaking units not on standby status, and all monitoring devices, for any evidence of abnormality.~~

~~2. Substations where the primary voltage is sixty-nine (69) KV or greater, for damage to or deterioration of components including structures, fences, gauges monitoring devices.~~

~~3. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, for leaks, condition of case, connections, temperature and overloading.~~

~~4. Electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage or deterioration (c) At intervals not to exceed one (1) year, the utility shall inspect:~~

~~1. Production facilities maintained on a standby status. Except for remotely controlled facilities, all production facilities shall also be thoroughly inspected.~~

~~2. Substations with primary voltage of fifteen (15) to sixty- eight (68) KV.~~

~~(d) At intervals not to exceed two (2) years, the utility shall inspect electric lines operating at voltages of less than sixty-nine (69) KV, including insulators, conductors and supporting facilities.~~

~~(e) The utility shall inspect other facilities as follows.~~

~~1. Utility buildings shall be inspected for compliance with safety codes at least annually.~~

~~2. Construction equipment shall be inspected for defects, wear and operational hazards at least quarterly.~~

~~(f) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.~~

~~(5) Gas utility inspection. Each gas utility shall make systematic inspections of its system to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is prescribed or recommended by the Department of Transportation, 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities.~~

~~(a) The following maximum time intervals are prescribed for certain inspections provided for in 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified, and for certain additional inspections not provided for in such code.~~

~~1. At intervals not to exceed every fifteen (15) months but at least once each calendar year, the utility shall inspect and visually examine:~~

~~a. Production wells, storage wells, and well equipment, including their exterior components.~~

~~b. Pressure limiting stations, relief devices, pressure regulating stations, and vaults.~~

~~c. Accessibility of the curb box and valve on a service line.~~

~~2. The utility shall inspect other facilities as follows:~~

~~a. Utility buildings shall be inspected for compliance with safety codes at least annually.~~

~~b. Construction equipment under the control of the utility shall be inspected for defects, wear and operational hazards at least quarterly.~~

~~(b) At intervals not to exceed the periodic meter test intervals, individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.~~

~~(c) At intervals not to exceed the periodic meter test intervals, the curb box and valve on the service line shall be inspected for operable condition.~~

~~(d) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.~~

~~(6) Water utility inspections. Each water utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.~~

~~(a) The utility shall annually inspect all structures pertaining to source of supply for their safety and physical and structural integrity, including dams, intakes, and traveling screens. The utility shall semiannually inspect supply wells, their motors and structures, including electric power wiring and controls for proper and safe operation.~~

~~(b) The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water storage facilities, including electric power wiring and controls; hydrants, mains, and valves.~~

~~(c) The utility shall monthly inspect construction equipment and vehicles for defects, wear, operational hazards, lubrication, and safety features.~~

~~(7) Telephone utility inspection. Each telephone utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.~~

~~(a) The utility shall inspect aerial plant for electrical hazards, proper clearance for electric facilities, and climbing safety every two (2) years.~~

~~(b) The utility shall inspect underground plant for presence of gas, proper clearance from electric facilities and safe working conditions at least annually.~~

~~(c) The utility shall inspect utility-provided station equipment and connections for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring when on a customer's premises.~~

~~(d) The utility shall inspect utility buildings for compliance with safety codes at least annually.~~

~~(e) The utility shall inspect construction equipment for defects, wear and operational hazards at least quarterly.~~

~~(f) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.~~

~~(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but not less frequently than is set out below for the various types of inspections, or as otherwise required in 807 KAR 5:071.~~

~~(a) The utility shall annually inspect collecting sewers and manholes on a scheduled basis unless conditions warrant more frequent inspections.~~

~~(b) The utility shall weekly inspect all mechanical equipment unless otherwise authorized by the commission.~~

~~Section 26. Reporting of Accidents, Property Damage or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of any utility related accident which results in:~~

~~(a) Death; or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization;~~

~~(b) Actual or potential property damage of $25,000 or more; or~~

~~(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less.~~

~~(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident.~~

~~(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.~~

~~Section 27. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation.~~]

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: October 12, 2012

FILED WITH LRC: October 12, 2012 at noon

CONTACT PERSON: Gerald E. Wuetchers, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, November 13, 2012)

807 KAR 5:011. Tariffs.

RELATES TO: KRS[~~Chapter~~] 278.010, 278.030, 278.160, 278.170, 278.180, 278.185, 278.190***, 369.102(8)[.]***

STATUTORY AUTHORITY: KRS 278.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.160(1) requires[~~provides that~~] the commission to promulgate an administrative regulation to establish requirements for each utility to[~~shall prescribe rules under which each utility shall~~] file schedules showing all rates and conditions established by it and collected or enforced. This administrative regulation establishes requirements for utility tariffs.

Section 1. Definitions. (1) "Commission" is defined by KRS 278.010(15).

(2) "Date of issue" means the date the tariff sheet is signed by the representative of the utility authorized to issue tariffs.

(3) "Nonrecurring charge" means a charge or fee assessed to customers to recover the specific cost of an activity, which:

(a) Is due to a specific request for a certain type of service activity for which, once the activity is completed, additional charges ***are not[~~shall not be~~]*** incurred; and

(b) Is limited to only recover the specific cost of the specific service.

(4) "Person" is defined by KRS 278.010(2).

(5) "Rate" is defined by KRS 278.010(12).

(6) "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).

(7) "Signature" means an original signature or an ***"***electronic signature***"*** as defined by KRS 369.102(8).

(8) "Statutory notice" means notice made in accordance with KRS 278.180.

(9) "Tariff" means a utility's schedule of each of its rates, charges, tolls, maps, terms, and conditions of service over which the commission has jurisdiction.

(10) "Utility" is defined by KRS 278.010(3).

(11) "Utility's office or place of business" means a location at which the utility regularly employs and stations one (1) or more employees and is open to the public for customer service.

Section 2. General. (1) Beginning January 1, 2013, each tariff sheet and supporting document filed with the commission shall be electronically submitted to the commission using the commission's electronic Tariff Filing System located at https://psc.ky.gov/psc_portal/.

(2) Each utility shall maintain a complete tariff with the commission.

(3) A utility furnishing more than one (1) type of service (water and electricity for example) shall file a separate tariff for each type of service.

(4) A utility shall make available a paper or electronic copy of ***the utility's[~~its~~]*** current tariff for public inspection in the utility's office or place of business.

(5) A utility that operates a public Web site for its utility operations shall:

(a) Make available on that Web site for public viewing and downloading a copy of ***the utility's[~~its~~]*** current tariff for each type of service that it provides; or

(b) Place on its Web site a hyperlink to the commission's Web site where the tariff has been posted.

Section 3. Format. (1) A new tariff or revised sheet of an existing tariff filed with the commission shall be:

(a) Printed or typewritten;

(b) Eight and one-half (8 1/2) by eleven (11) inches in size; and

(c) In type no smaller than nine (9) point font, except headers and footers**,** which shall be in type no smaller than eight (8) point font.

(2) Tariff Form-1. The first sheet of a tariff shall be on Tariff Form-1 or reasonable facsimile, shall be used as the tariff's cover page, and shall contain:

(a) The utility's name, mailing address, street address of ***the utility's[~~its~~]*** principal office***[~~,~~]*** if different from the mailing address, and Web site if applicable;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number; (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) A statement of each type of service offered;

(d) A statement of the area served;

(e) The date of issue and date on which the tariff is to become effective;

(f) The signature of the representative of the utility authorized to issue tariffs; and

(g) The signatory's title or position.

(3) Tariff Form-2. With the exception of the first sheet of the tariff which shall be on Tariff Form-1, all other tariff sheets shall be on Tariff Form-2 or reasonable facsimile and shall contain:

(a) The utility's name and territory served;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number; (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) In the upper right-hand corner, the tariff sheet number and, if applicable, the cancelled tariff sheet number; (Example: First Revised Sheet No. 1, Cancelling Original Sheet No. 1);

(d) The date of issue and date on which the tariff is to become effective;

(e) The signature of the utility representative authorized to issue tariffs;

(f) The signatory's title or position; and

(g) If applicable, a statement that the tariff is "Issued by authority of an Order of the Public Service Commission in Case No. _____ Dated _____, 20____".

(4) Each tariff sheet shall contain a blank space at its bottom right corner that measures at least three and one-half (3.5) inches from the right of the tariff sheet by two and one-half (2.5) inches from the bottom of the tariff sheet to allow space for the commission to affix ***the commission's[~~its~~]*** stamp.

Section 4. Contents of Schedules. (1) In addition to a clear statement of all rates, each rate schedule shall state the city, town, village**,** or district in which rates are applicable.

(a) If a schedule is applicable in a large number of communities, ***the schedule[~~it~~]*** shall be accompanied by an accurate index so that each community in which the rates are applicable may be readily ascertained.

(b) ***If a utility indicates[~~A utility may indicate~~]*** the applicability of a schedule by reference to the index sheet***, the utility shall use[~~with~~]*** language indicating "Applicable within the corporate limits of the City of _____," or "see Tariff Sheet No. _____ for applicability."

(2) The following information shall be shown in each rate schedule under the following captions in the order listed:

(a) Applicable: show the territory covered;

(b) Availability of service: show the classes of customers affected, including residential, commercial, and other groups of customers;

(c) Rates: list all rates offered;

(d) Minimum charge: state the amount of the charge, the quantity allowed (if volumetrically based), and if it is subject to a late payment charge;

(e) Late payment charge: state the amount **or reference the tariff section containing the amount**;

(f) Term: if contracts are made for certain periods, give the length of the term; and

(g) Special rules: list ***[~~any~~]***special rules or requirements***, if applicable,*** that are in effect covering this tariff.

(3) Each rate schedule shall state the type or class of service available ***pursuant to[~~under~~]*** the stated rates, by using language similar to "available for residential lighting" or "available for all purposes."

(4) For a tariff in which a number of rate schedules are shown available for various uses, each rate schedule shall be identified either by:

(a) A number in the format "Schedule No. ___"; or

(b) A group of letters, with the designation indicative of the type or class of service for which the rate schedule is available. The format for use of a group of letters shall be in the format "Tariff R.S." indicating that the rate schedule states residential service rates.

(5) A tariff may be further divided into sections.

Section 5. Filing Requirements. (1) Each tariff filing shall include a cover letter and conform to the requirements established in this subsection.

(a) Each document shall be submitted in portable document format ("PDF") and be capable of viewing with Adobe Acrobat Reader.

(b) Each document shall be search-capable and optimized for viewing over the internet.

(c) Each scanned document shall be scanned at a resolution of 300 dots per inch (dpi).

(d) A document may be bookmarked to distinguish different sections of the filing.

(2) A document shall be considered filed with the commission if it has:

(a) Been successfully transmitted using the commission's electronic tariff filing system; and

(b) Met all other requirements specified in this administrative regulation.

Section 6. Tariff Addition, Revision, or Withdrawal. (1) ***A tariff, tariff sheet, or tariff provision shall not[No tariff, tariff sheet, or tariff provision may]*** be changed, cancelled**,** or withdrawn except as provided by ***this section and Section[Sections 6 and]*** 9 of this administrative regulation.

(2) A new tariff or revised sheet of an existing tariff shall be issued and placed into effect:

(a) By order of the commission; or

(b) By issuing and filing with the commission a new tariff or revised sheet of an existing tariff and providing notice to the public **in accordance with Section 8 of this administrative regulation** and statutory notice to the commission.

(3) Each revised tariff sheet shall contain one (1) of the following symbols in the margin indicating the change made:

(a) "(D)" to signify deletion;

(b) "(I)" to signify increase;

(c) "(N)" to signify a new rate or requirement;

(d) "(R)" to signify reduction; or

(e) "(T)" to signify a change in text.

Section 7. Tariff Filings Pursuant to Orders. If the commission has ordered a change in the rates or rules of a utility, the utility shall file a new tariff or revised sheet of an existing tariff ***establishing[setting out]***:

(1) The revised rate, classification, charge, or rule;

(2) The applicable case number;

(3) The date of the commission order; and

(4) The margin symbols required by Section 6(3) of this administrative regulation.

Section 8. Notices. A utility shall give notice to the public as required by this section **if a charge or fee is changed, revised, or initiated or a condition of service or a rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service**. (1) Public postings.

(a) A utility shall post at its place of business a copy of the required notice no later than the date the filing is made with the commission. The notice shall not be removed until the filing has become effective***.[; and]***

(b) A utility that maintains a public Web site shall, within two (2) business days of filing, post a copy of the public notice as well as a hyperlink to its filing on the commission's Web site. The notice shall not be removed until the filing has become effective or the commission issues a final decision on the filing.

(2) Manner of notification.

(a) If the utility has twenty (20) or fewer customers or is a sewage utility, it shall mail written notice in accordance with subsection (3) of this section to each customer no later than the date on which the filing is submitted to the commission.

(b) If the utility has more than twenty (20) customers and is not a sewage utility, it shall:

1. Include notice with customer bills mailed by the date the filing is submitted;

2. Publish notice in a trade publication or newsletter going to all customers by the date the filing is submitted; or

3. Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made by the date the filing is submitted.

(c) A utility that provides service in more than one (1) county and is not a sewage utility may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Notice requirements. Each notice shall contain the following information:

(a) The present rates and proposed rates for each customer class to which the proposed rates will apply;

(b) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;

(c) The amount of the average usage and the effect upon the average bill for each customer class to which the proposed rate change will apply;

(d) A statement that the rates contained in this notice are the rates proposed by (name of utility) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(e) A statement that ***a[any]***[**corporation, association, or**] person may within thirty (30) days after the initial publication or mailing of notice of the proposed rate changes submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602 that ***establishes[sets forth]*** the grounds for the request including the status and interest of the party;

(f) A statement that ***a[any]*** person may examine this filing and any other documents the utility has filed with the Public Service Commission at the offices of (the name of the utility) located at (the utility's address) and on the utility's Web site at (the utility's Web site address), if the utility maintains a public Web site**;[, and]**

(g) A statement that this filing and related documents are available on the Public Service Commission's Web site at http://psc.ky.gov**; and**

(h) A statement that written comments regarding the proposed rate may be submitted to the Public Service Commission by mail or through the Public Service Commission's Web site.

(4) Proof of notice. A utility shall file with the commission no later than forty-five (45) days from the date of the initial filing:

(a) If its notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;

(b) If ***the utility's[its]*** notice is published in a trade publication or newsletter going to all customers, an affidavit from an authorized representative of the utility verifying the trade publication or newsletter was mailed; or

(c) If the notice is mailed, an affidavit from an authorized representative of the utility verifying the notice was mailed.

(5) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. Notice given pursuant to subsection (2)(a) or (b) of this section shall substitute for the notice required by 807 KAR 5:051, Section 2, if the notice contained a clear and concise explanation of the proposed change in the rate schedule applicable to each customer.

(6) Periodic recalculation of a formulaic rate that does not involve a revision of the rate and that is performed in accordance with provisions of an effective rate schedule, special contract, or administrative regulation does not require notice in accordance with this section.

Section 9. Statutory Notice to the Commission. (1) A new tariff or revised sheet of an existing tariff shall become effective on the date stated on the tariff sheet if:

(a) Proper notice was given to the **public in accordance with Section 8 of this administrative regulation and the** commission[**and the public**]; and

(b) The tariff is not suspended by an order of the commission pursuant to KRS 278.190.

(2) All information and notices required by this administrative regulation shall be furnished to the commission at the time of the filing of the proposed rate revision. If ***[the commission determines that]***there ***is[was]*** a substantial omission, which ***is[was]*** prejudicial to full consideration by the commission or to an intervenor, the statutory notice to the commission shall not commence to run and shall not be computed until the omitted information and notice is filed.

Section 10. Nonrecurring Charges. Notwithstanding 807 KAR 5:001, a utility may revise a nonrecurring charge pursuant to this section and Sections 6 and 9 of this administrative regulation.

(1) Each requested rate revision shall be accompanied by:

(a) A specific cost justification for the proposed rates;

(b) A copy of the public notice of each requested rate revision and verification that it has been made pursuant to Section 8 of this administrative regulation;

(c) A detailed statement explaining why the proposed changes were not included in the most recent general rate case***[,]*** and why

current conditions prevent deferring the proposed changes until the next general rate case;

(d) A statement identifying the group of potential or existing customers affected by the rate revision; and

(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period or an affidavit from an authorized representative of the utility attesting that the utility's income statement and balance sheet are on file with the commission.

(2) The proposed rate shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3)(a) If the additional revenue to be generated from the proposed rate revision exceeds by five (5) percent the total revenues provided by all nonrecurring charges for a recent twelve (12) month period, the utility shall, in addition to the information ***established[~~set out~~]*** in subsection (1) of this section, file an absorption test.

(b) The absorption test shall show that the additional net income generated by the tariff filing shall not result in an increase in the rate of return (or other applicable valuation ***method[~~methods~~]***) to a level greater than that ***[~~which was~~]***allowed in the most recent general rate case.

(c) As part of the absorption test, ***a[~~any~~]*** general rate increase received during the twelve (12) month period shall be annualized.

(4) ***Upon a utility's submitting the filing to the commission, the utility[~~When the utility submits its filing to the commission, it~~]*** shall transmit by electronic mail an electronic copy in PDF to rateintervention@ag.ky.gov or mail a paper copy to the Attorney General's Office of Rate Intervention, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.

Section 11. Adoption Notice. (1) A utility shall file an adoption notice on Tariff Form-3 if:

(a) A change of ownership or control of a utility occurs;

(b) A utility or a part of its business is transferred from the operating control of one (1) company to that of another;

(c) A utility's name is changed; or

(d) A receiver or trustee assumes possession and operation of a utility.

(2) Unless otherwise authorized by the commission, the person operating the utility business going forward shall adopt, ratify, and make its own the former operating utility's rates, classifications and requirements on file with the commission and effective at the time of the change of ownership or control.

(3) An adoption notice may be filed and made effective without previous notice.

(4) An adoption notice filed with the commission shall be in consecutive numerical order, beginning with Public Service Commission adoption notice No. 1.

(5) Within ten (10) days after the filing of an adoption notice by a utility that had no tariff on file with the commission, the utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or a tariff it proposes to put into effect in lieu thereof, in the form ***established[~~prescribed~~]*** in Sections 2 through 4 of this administrative regulation with proper identifying designation.

(6) Within ten (10) days after the filing of an adoption notice by a utility that had other tariffs on file with the commission, the utility shall issue and file one (1) of the following:

(a) A complete reissue of its existing tariff that ***establishes the rates and requirements***:

1. ***[~~Sets out the rates and requirements~~]***Of the predecessor utility then in effect and adopted by ***the successor utility[~~it~~]***; or

2. ***The utility[~~Sets out the rates and requirements it~~]*** proposes to place into effect for ***the customers served by*** the predecessor utility;

(b) New additional pages or revised current pages of its existing tariffs that ***establish the rates and requirements***:

1. ***[~~Set out the rates and requirements~~]***Of the predecessor utility then in effect and adopted by ***the successor utility[~~it~~]***; or

2. ***The utility[~~Set out the rates and requirements it~~]*** proposes to place into effect for ***the customers served by*** the predecessor utility.

(7)(a) If a new tariff or revised sheet of an existing tariff states the rates and requirements of the predecessor utility without change, the tariff or revised sheet of an existing tariff may be filed without notice.

(b) If a new tariff or revised sheet of an existing tariff states ***a[~~any~~]*** change in the effect of the rates or requirements of the predecessor utility, the new tariff or revised sheet of an existing tariff shall be subject to Sections 9 and 10 of this administrative regulation.

Section 12. Posting Tariffs, Administrative Regulations**,** and Statutes. (1) Each utility shall display a suitable placard, in large type, that states that the utility's tariff and the applicable administrative regulations and statutes are available for public inspection.

(2) Each utility shall provide a suitable table or desk in its office or place of business on which it shall make available for public viewing:

(a) A copy of all effective tariffs and supplements ***establishing[~~setting out~~]*** its rates, classifications, charges, rules**,** and requirements, together with forms of contracts and applications applicable to the territory served from that office or place of business;

(b) **A copy of all proposed tariff revisions that the utility has filed and are pending before the commission and all documents filed in a commission proceeding initiated to review the proposed tariff revisions;**

(c) A copy of ***KRS Chapter 278[~~the Kentucky Revised Statutes applicable to the utility~~]***; and

(d)[~~(c)~~] A copy of ***807 KAR Chapter 5[~~the administrative regulations governing the utility~~]***.

(3) The information required in subsection (2) of this section shall be made available in an electronic or nonelectronic format.

Section 13. Special Contracts. Each utility shall file a copy of all special contracts entered into governing utility service ***that establish[~~which set out~~]*** rates, charges**,** or conditions of service not included in its general tariff.

Section 14. Confidential Materials. A utility may request confidential treatment for materials filed pursuant to this administrative regulation**.** ***Confidential material shall be treated*** in accordance with the procedures established in 807 KAR 5:001, Section 13(3).

Section 15. Deviations from Rules. In special cases, for good cause shown and upon application to and approval by the commission, deviations from the rules in this administrative regulation may be permitted.

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

(a) "Tariff Form-1", July 2012;

(b) "Tariff Form-2", July 2012; and

(c) "Tariff Form-3"; July 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov.[~~Section 1. Definitions. For purpose of this administrative regulation: "Commission" means the Public Service Commission.~~

~~Section 2. General. All utilities under the jurisdiction of the commission shall file with the secretary two (2) cover letters and four (4) complete copies of a tariff containing schedules of all its rates, charges, tolls and maps or plats of the area in which it offers service and all its rules and administrative regulations and shall keep a copy of said tariff open to public inspection in its offices and places of business, as required by KRS 278.160, in substantially the form and manner hereinafter set out. If a utility furnishes more than one (1) kind of service (water and electricity for example), a separate tariff must be filed for each kind of service. For the purpose of the commission's rules and administrative regulations, the utility's office or place of business shall be deemed a location at which the utility regularly employs and stations one (1) or more employees and is open to the public.~~

~~Section 3. Form and Size of Tariffs. (1) All tariffs must be printed from type not smaller than six (6) point or typewritten, mimeographed or produced by similar process, on hard calendared paper of good quality.~~

~~(2) The pages of a tariff shall be eight and one-half (8 1/2) by eleven (11) inches in size.~~

~~(3) Utilities shall publish tariffs in loose-leaf form using one (1) side of the paper only, with not more than one (1) schedule to the page.~~

~~(4) The front cover page of a tariff shall contain the following:~~

~~(a) Name of the utility and location of principal office.~~

~~(b) Statement of kind of service offered.~~

~~(c) General statement of territory served.~~

~~(d) Date of issue and date tariff is to become effective.~~

~~(e) Signature of the officer of the utility authorized to issue tariffs.~~

~~(f) Identifying designation in the upper right-hand corner as required by Section 5 of this administrative regulation.~~

~~(5) The second and succeeding pages shall contain:~~

~~(a) All the rules and administrative regulations of the utility.~~

~~(b) Rate schedules showing all rates and charges for the several classes of service.~~

~~(c) Signature of the officer of the utility authorized to issue tariffs.~~

~~(d) Date of issue and date tariff is to become effective.~~

~~(e) Identifying designation in upper right-hand corner as required by Section 5 of this administrative regulation.~~

~~(6) In that portion of the tariff dealing with rates, the desired information shall be shown under the following captions in the order listed:~~

~~(a) Applicable: show territory covered by tariff.~~

~~(b) Availability of service: show classes of customers affected, such as domestic, commercial, etc.~~

~~(c) Rates: list all rates covered by tariff.~~

~~(d) Minimum charge: state amount of charge and quantity allowed.~~

~~(e) Delayed payment charge: state if penalty or discount.~~

~~(f) Term: if contracts are made for certain periods, give length of term.~~

~~(g) Special rules: if any special rules and administrative regulations are in effect covering this tariff, list same hereunder.~~

~~(7) The secretary of the commission will furnish standard forms of tariffs on request.~~

~~Section 4. Contents of Schedules. (1) Each rate schedule in addition to a clear statement of all rates thereunder must state the city, town, village or district in which rates are applicable; provided, however, that schedules applicable in a large number of communities must be accompanied by an accurate index by which each community in which the rates are applicable may be readily ascertained, in which case the applicability of a schedule may be indicated by reference to the index sheet. (Example: Applicable within the corporate limits of the City of _____, or see Tariff Sheet No. 2B for applicability.)~~

~~(2) Each rate schedule must state that class of service available under the rates stated therein. (Example: Available for domestic lighting, or available for all purposes, etc.)~~

~~(3) For a tariff in which a number of schedules are shown available for various uses, each schedule shall be identified by a number or by a group of letters, and if by a group of letters, the designation shall be indicative of the class of service for which the schedule is available. (Example: Schedule No. 1 or Tariff D.U.R. indicating that the schedule states domestic utility rates.)~~

~~(4)(a) Each page of the tariff shall bear the Commission Number of the tariff, the date issued and effective, the signature of the issuing officer, and in the upper right-hand corner, a further designation, such as "Original Sheet No. 1," "Original Sheet No. 2," etc.~~

~~(b) In the case of a change in the text of any page as hereinafter provided the further designation shall be "First Revised Sheet No. 1, cancelling Original Sheet No. 1," etc.~~

~~(c) Tariffs may be further divided into sections, and so designated if required by their size and contents.~~

~~(5) All schedules shall state whether a minimum charge is made, and if so, they shall set out all such charges, and further state whether such minimum charge is subject to prompt payment discount or delayed payment penalty.~~

~~Section 5. Designation of Tariffs. All tariffs must bear in the upper right-hand corner of the front cover page the commission number thereof. Subsequent tariffs filed as provided by Sections 6 and 9 of this administrative regulation, must continue such designation in consecutive numerical order. Any subsequent tariff must also show the commission number of the tariff cancelled, changed or modified by it.~~

~~Section 6. Change or Withdrawal of Rate Schedules Administrative Regulations. (1) No tariff, or any provision thereof, may be changed, cancelled or withdrawn except upon such terms and conditions as the commission may impose and in compliance with KRS 278.180 and Sections 6 and 9 of this administrative regulation.~~

~~(2)(a) All revisions in tariff sheets shall contain a symbol in the margin indicating the change made. These symbols are as follows:~~

~~(C) To signify changed administrative regulation.~~

~~(D) To signify discontinued rate, administrative regulation or test.~~

~~(I) To signify increase.~~

~~(N) To signify new rate and/or new test.~~

~~(R) To signify reduction.~~

~~(T) To signify a change in text.~~

~~(b) In the case of a change in the text of any tariff sheet where the rate remains the same, the effective date shall remain the same as that on the amended sheet. The issued date of the change shall be the date the filing is made with the commission.~~

~~(c) All tariff filings which involve the furnishing of equipment or services to the customer by the utility shall be accompanied by a description of the equipment or service involved in the filing and a cost of service study justifying the proposed charges.~~

~~(3) New tariffs stating changes in any provision of any effective tariff may be issued and put into effect by either of the two (2) following methods:~~

~~(a) By order of the commission upon formal application by the utility, and after hearing, as provided by Section 7 of this administrative regulation.~~

~~(b) By issuing and filing on at least twenty (20) days' notice to the commission and the public a complete new tariff (or revised sheet of an existing tariff) stating all the provisions and schedules proposed to become effective as provided by Sections 7 and 9 of this administrative regulation.~~

~~(4) The provisions or rates stated on any sheet or page of a tariff may be modified or changed by the filing of a revision of such sheet or page in accordance with the provisions of this administrative regulation. Such revisions must be identified as required herein.~~

~~Section 7. Adjustment of Rates on Application. Upon the granting of authority for a change in rates, the utility shall file a tariff setting out the rate, classification, charge, or rule and administrative regulation authorized by the commission to become effective the order may direct, and each page of the tariff so filed shall state that it is "Issued by authority of an order of the Public Service Commission in Case No. _____ dated _____, 19___."~~

~~Section 8. Notices. Notices shall be given by the utility in the following manner:~~

~~(1) Advance notice, abbreviated newspaper notice. Utilities with gross revenues greater than $1,000,000 shall notify the commission in writing of Intent to File Rate Application at least four (4) weeks prior to filing. At or about this time application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon which may be used to obtain a copy from applicant of the full schedule of increases or rate changes.~~

~~(2) Notice to customers of proposed rate changes. If the applicant has twenty (20) or fewer customers, typewritten notice of the proposed rate changes and the estimated amount of increase per customer class shall be placed in the mail to each customer no later than the date on which the application is filed with the commission and, in addition, a sheet shall be posted at its place of~~

~~business containing such information. Except for sewer utilities which must give a notice by mail to all of their customers pursuant to KRS 278.185, all applicants with more than twenty (20) customers shall post a sheet stating the proposed rates and the estimated amount of increase per customer class at their place of business and, in addition, notice thereof:~~

~~(a) Shall be included with customer billings made on or before the application is filed with the commission; or~~

~~(b) Shall be published by such date in a trade publication or newsletter going to all customers; or~~

~~(c) Shall be published once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in their service area, the first publication to be made prior to the filing of the application with the commission. Each such notice shall contain the following language:~~

~~The rates contained in this notice are the rates proposed by (name of utility). However, the Public Service Commission may order rates to be charged that differ from these proposed rates. Such action may result in rates for consumers other than the rates in this notice.~~

~~(3) Notice as to intervention. The notice made in compliance with subsection (2) of this section shall include a statement to the effect:~~

~~(a) That any corporation, association, body politic or person may by motion within thirty (30) days after publication or mailing of notice of the proposed rate changes request leave to intervene;~~

~~(b) That the motion shall be submitted to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, and shall set forth the grounds for the request including the status and interest of the party; and~~

~~(c) That intervenors may obtain copies of the application and testimony by contacting the applicant at a name and address to be stated in the notice. A copy of the application and testimony shall be available for public inspection at the utility's offices.~~

~~(4) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. If notice is given by subsection (2)(a) or (b) of this section and if the notice contains a clear and concise explanation of the proposed change in the rate schedule applicable to each customer, no notice under Section 2 of 807 KAR 5:051 shall be required. Otherwise, such notice shall be given.~~

~~(5) Notice of hearing. Where notice pursuant to KRS 424.300 is published by the applicant in a newspaper, it shall be published in a newspaper of general circulation in the areas that will be affected one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place and date of hearing.~~

~~(6) Extensions of time. Applications for extensions of time shall be made to the commission in writing and will be granted only upon a showing of compelling reason.~~

~~Section 9. Statutory Notice to the Commission. (1) When a new tariff has been so issued and notice thereof given to the commission and the public in all respects as hereinbefore provided, such tariff will become effective on the date stated therein unless the operation thereof be suspended and the rates and administrative regulations therein be deferred by an order of the commission pending a hearing concerning the propriety of the proposed rates and administrative regulations under KRS 278.190.~~

~~(2) All information and notice required by these rules shall be furnished to the commission at the time of the filing of any proposed revisions in rates or administrative regulations, and the twenty (20) days' statutory notice to the commission will not commence to run and will not be computed until such information and notice is filed if the commission determines that there was a substantial omission, which was prejudicial to full consideration by the commission or to an intervenor.~~

~~Section 10. Nonrecurring Charges. Nonrecurring charges are charges to customers due to a specific request for certain types of service activity for which, when the activity is completed, no additional charges may be incurred. Such charges are intended to be limited in nature and to recover the specific cost of the activity. Nonrecurring charges include reconnection charges, late payment fees, service order changes and hook-on or tap fees. This section allows a utility to seek a rate revision for a nonrecurring charge outside a general rate proceeding. In addition to the specific information required pursuant to the above sections, the following information must be submitted to the commission when a utility makes a filing to increase miscellaneous or nonrecurring service charges outside a general rate case:~~

~~(1) Each requested rate revision must be accompanied by:~~

~~(a) A specific cost justification for the proposed rates and a full description of the equipment or service provided under tariff (807 KAR 5:001, Section 6(2)(c)). The proposed rates should at least cover incremental costs, and a reasonable contribution to overhead. Incremental costs are defined as those costs which would be specifically incurred in the provision of this service.~~

~~(b) A copy of the public notice of each requested rate revision and verification that it has been made pursuant to Section 8 of this administrative regulation. In addition to the notice requirements contained in Section 8 of this administrative regulation, the utility shall also mail a copy of its filing to the Attorney General's Consumer Protection Division. The Attorney General will then have ten (10) days to notify the commission in writing if it requests a hearing in a particular case.~~

~~(c) A detailed statement explaining why the proposed changes could not have been included in the most previous general rate case, and why current conditions prevent deferring the proposed changes until the next general rate request.~~

~~(d) An impact statement identifying the group of customers affected by the proposed tariff. The impact statement shall identify potential as well as existing customers.~~

~~(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period.~~

~~(2) If the additional revenue to be generated from the proposed tariff revisions exceeds by five (5) percent the total revenues provided by all miscellaneous and nonrecurring charges for a recent twelve (12) month period, the utility must file, in addition to the information set out in subsection (1)(a) of this section, the following: An absorption test showing that the additional net income generated by the tariff filing will not result in an increase in the rate of return (or other applicable valuation methods) to a level greater than that which was allowed in the most recent rate case. Any general rate increases received during the twelve (12) month period must be annualized. Any significant cost changes may be included but must be documented as part of the filing.~~

~~(3) No more than two (2) such tariff filings under this procedure shall be made between general rate cases. Additional tariff filings for nonrecurring charges will be processed according to general rate case procedures.~~

~~When these requirements are met, such a filing may be made by letter with supporting documentation and will not require the information normally required pursuant to the commission's general rate case administrative regulation, 807 KAR 5:001, Section 9.~~

~~Section 11. Change of Ownership; Adoption notice. (1) In case of change of ownership or control of a utility, or when a utility or a part of its business is transferred from the operating control of one company to that of another, or when its name is changed, the company which will thereafter operate the utility business must use the rates, classifications and administrative regulations of the former operating company (unless authorized to change by the commission), and shall issue, file and post an adoption notice, on a form furnished by the commission, adopting, ratifying and making its own all rates, rules, classifications and administrative regulations of the former operating utility, on file with the commission and effective at the time of such change of ownership or control.~~

~~(2) Adoption notices must likewise be filed by receivers and trustees assuming possession and operation of utilities. Adoption notices may be filed and made effective without previous notice.~~

~~(3) Adoption notices filed with the commission by each utility shall be in consecutive numerical order, beginning with Public Service Commission Adoption notice No. 1.~~

~~(4) Within ten (10) days after the filing of an adoption notice as aforesaid by a public utility which then had no tariffs on file with the commission, said utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or such other tariff as it proposes to put into effect in lieu thereof, in~~

~~the form prescribed in Sections 2 through 5 of this administrative regulation with proper identifying designation. (Example: Public Service Commission No. 1 cancels Public Service Commission Adoption notice No. 1.)~~

~~(5) Within ten (10) days after the filing of an adoption notice, as required by subsection (2) of this section, by a public utility which then had other tariffs on file with the commission said utility shall issue and file in its own name rate schedules and administrative regulations (on additional or revised sheets to its existing tariff, or by a complete reissue of its existing tariff, or otherwise), which shall set out the rates and administrative regulations of the predecessor utility then in effect and adopted by it, or such other rates and administrative regulations as it proposes to put into effect in lieu thereof, in accordance with the provisions of these rules with proper identifying designation. (Example: First Revision of Original Sheet No. 2A, Public Service Commission, No. 11, cancels Original Sheet No. 2A, also cancels Public Service Commission Adoption notice No. 6; or Public Service Commission No. 12 cancels Public Service Commission No. 11, also cancels Public Service Commission Adoption notice No. 6.)~~

~~(6) When a tariff or revision is issued by a utility in compliance with these rules which states the rates, rules and administrative regulations of the predecessor utility without change in any of the provisions thereof, the same may be filed without notice; but when such tariff or revision states any change in the effect of the rates, rules and administrative regulations of the predecessor utility, such tariff or revision shall be subject to Sections 9 and 10 of this administrative regulation.~~

~~Section 12. Posting Tariffs, Administrative Regulations and Statutes. Every utility shall provide a suitable table or desk in its office and place of business, on which shall be available to the public at all times the following:~~

~~(1) A copy of all effective tariffs and supplements setting out its rates, classifications, charges, rules and administrative regulations, together with forms of contracts and applications applicable to the territory served from that office or place of business.~~

~~(2) Copies of the Kentucky Revised Statutes applicable to the utility.~~

~~(3) A copy of the administrative regulations governing such utility adopted by the commission.~~

~~(4) A suitable placard, in large type, giving information to the public that said tariffs, rules and administrative regulations and statutes are kept there for public inspection.~~

~~Section 13. Special Contracts. Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this administrative regulation applicable to tariffs containing rates, rules and administrative regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable.~~

~~Section 14. Deviations from Rules. In special cases, for good cause shown upon application to and approval by, the commission may permit deviations from these rules.~~

~~Section 15. Forms. In submitting to the commission information required by these rules the following forms shall be followed where applicable:~~

~~(1) Form of cover sheet for tariffs.~~

~~(2) Form for filing rules and administrative regulations.~~

~~(3) Form for filing rate schedules.~~

~~(4) Form of certificate of notice to the public of change in tariff where no increase of charges results.~~

~~(5) Form of certificate of notice to the public of change in tariff which results in increased charges.~~

~~(6) Form of adoption notice.~~

~~FORM OF COVER SHEET FOR TARIFFS~~
~~P.S.C. NO. _____~~
~~CANCELS P.S.C. NO. _____~~
~~(NAME OF COMPANY)~~
~~(LOCATION OF COMPANY)~~
~~Rates, Rules and Administrative Regulations for Furnishing~~
~~(SERVICE RENDERED)~~
~~at~~
~~(LOCATION SERVED)~~
~~FILED WITH PUBLIC SERVICE COMMISSION~~
~~OF KENTUCKY~~
~~Issued _____, 19___ Effective _____, 19___~~
~~Issued by: (Name of Utility)~~
~~By:~~
~~FORM FOR FILING RULES &~~
~~ADMINISTRATIVE REGULATIONS~~
~~(Page 2 of Tariff)~~
~~Name of Utility:~~
~~RULES & ADMINISTRATIVE REGULATIONS~~
~~Date of Issue:~~
~~Effective Date:~~
~~Issued by:~~
~~Name:~~
~~Title:~~
~~FORM FOR FILING RATE SCHEDULES~~
~~(Page 3 of Tariff)~~
~~For: (Community, Town or City)~~
~~P.S.C. NO.:~~
~~___(Original) Sheet No._____~~
~~___(Revised)~~
~~Name of Issuing Corporation:~~
~~Cancelling P.S.C. No.:~~
~~___(Original) Sheet No._____~~
~~___(Revised)~~
~~CLASSIFICATION OF SERVICE~~
~~APPLICABLE: (Show territory covered by tariff.)~~
~~AVAILABILITY OF SERVICE: (Show classes of customers affected, such as domestic, commercial, etc.)~~
~~RATES: (List all rates covered by tariff.)~~
~~MINIMUM CHARGE: (State if penalty or discount.)~~
~~DATE OF ISSUE: (Month, Day, Year)~~
~~DATE EFFECTIVE: (Month, Day, Year)~~
~~ISSUED BY: (Name of Officer, Title, Address)~~
~~ISSUED BY AUTHORITY OF P.S.C. ORDER NO.:~~
~~FORM OF CERTIFICATE OF NOTICE TO THE~~
~~PUBLIC OF CHANGE IN TARIFF WHERE NO~~
~~INCREASE OF CHARGES RESULTS~~
~~(2 Copies Required)~~
~~To the Public Service Commission, Frankfort, Ky.~~

~~Pursuant to the Rules Governing Tariffs (effective _____), I hereby certify that I am (Title of Officer) _____ of the (Name of Utility) _____ a utility furnishing (Kind of Service) _____ service within the Commonwealth of Kentucky, which on the _____ day of _____, 19___, issued *Tariff P.S.C. No. _____, cancelling Tariff P.S.C. No._____, to become effective _____, 19___, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said administrative regulation, as follows:~~

~~On the _____ day of _____, 19___, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted.) _____ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said administrative regulation.~~

~~I further certify that the proposed changes in tariff of said utility will not result in an increase in the rates or charges to any customer.~~

~~Given under my hand this _____day of _____, 19___.~~

~~Address:~~

~~*If a revised sheet, or additional sheet of a loose-leaf tariff is used to state changes in rates or administrative regulations, the filing should be described as _____ Revision of Original Sheet No. ____ P.S.C. No. ___, cancelling ____ P.S.C. Adoption notice No. ___.~~

~~FORM OF CERTIFICATE OF NOTICE TO THE~~
~~PUBLIC OF CHANGE IN TARIFF WHICH~~
~~RESULTS IN INCREASED RATES~~

~~(2 Copies Required)~~
~~To the Public Service Commission, Frankfort, Ky.~~

~~Pursuant to the Rules Governing Tariffs (effective _____), I hereby certify that I am (Title of Officer) _____ of the (Name of Utility) _____ a utility furnishing _____ service within the Commonwealth of Kentucky, which on the _____ day of _____, 19___, issued its *Tariff P.S.C. No. _____, cancelling Tariff P.S.C. No. _____ to become effective _____, 19___, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said administrative regulation, as follows:~~

~~*On the _____ day of _____, 19___, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted.) _____ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said administrative regulation.~~

~~**On the _____ day of _____, 19___, typewritten or printed notice of the proposed rates or administrative regulations was mailed to each of the _____ customers of the company whose rates or charges will be increased thereby, a copy of said notice being attached thereto.~~

~~Given under my hand this _____ day of _____, 19___.~~

~~Address:~~

~~*If a revised sheet or additional sheet of a loose-leaf tariff is used to state changes in rates or administrative regulations, the filing should be described as Revision of Original Sheet No. _____ P.S.C. No. _____, or Original Sheet No. _____ P.S.C. No. _____ cancelling _____ P.S.C. Adoption notice No. _____.~~

~~**If Notice is given by publication as provided in Section 8, use the following:~~

~~That more than 20 customers will be affected by said change by way of an increase in their rates or charges, and on the _____ day of _____, 19___, there was delivered to the _____, a newspaper of general circulation in the community in which the customers affected reside, for publication therein once a week for three consecutive weeks prior to the effective date of said change, a notice of the proposed rates or administrative regulations, a copy of said notice being attached hereto. A certificate of the publication of said notice will be furnished the Public Service Commission upon the completion of the same in accordance with Section 9(2), of said administrative regulation.~~

~~FORM OF ADOPTION NOTICE~~
~~P.S.C. Adoption notice No.~~
~~ADOPTION NOTICE~~

~~The undersigned (Name of Utility) _____ of _____ hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs and supplements containing rates, rules and administrative regulations for furnishing (Nature of Service) _____ service at _____ in the Commonwealth of Kentucky, filed with the Public Service Commission by (Name of Predecessor) _____ of _____, and in effect on the _____ day of _____, 19___, the date on which the public service business of the said (Name of Predecessor) _____ was taken over by it.~~

~~This notice is issued on the _____ day of _____, 19___, in conformity with Section 10 of P.S.C. Tariff administrative regulations adopted by the Public Service Commission.~~
~~By:~~]

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: October 12, 2012

FILED WITH LRC: October 12, 2012 at noon

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, November 13, 2012)

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

RELATES TO: KRS 278.010, 278.030, 278.160, 278.180, 278.185, 278.190, 278.310, 278.380

STATUTORY AUTHORITY: KRS 278.040(3), 278.160(1), 278.180, 278.185(4)

NECESSITY, FUNCTION AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement KRS Chapter 278. This administrative regulation establishes a simplified and less expensive procedure for small utilities to use to apply to the commission for rate adjustments.

Section 1. Definitions. (1) "Annual report" means the financial and statistical report ***incorporated by reference in 807 KAR 5:006, which[~~that 807 KAR 5:006, Section 4(1)~~]***[3(1)]***[,]*** requires a utility to file ***the annual report*** with the commission.

(2) "Annual report for the immediate past year" means an annual report that covers the applicant's operations for either:

(a) The calendar year period prior to the year in which the applicant's application for rate adjustment is filed with the commission; or

(b) The most recent calendar year period that 807 KAR 5:006, Section 4(1)[3(1)], requires the applicant to have on file with the commission as of the date of the filing of its application for rate adjustment.

(3) "Applicant" means a utility that is applying for an adjustment of rates using the procedure established in this administrative regulation.

(4) "Gross annual revenue" means:

(a) The total revenue that a utility derived during a calendar year; or

(b) If the utility operates two (2) or more divisions that provide different types of utility service, the total amount of revenue derived from the division for which a rate adjustment is sought.

(5) "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).

(6)[(4)] "Utility" is defined by KRS 278.010(3).["]

Section 2. Utilities Permitted to File Application. A utility may apply for an adjustment of rates using the procedure established in this administrative regulation if it:

(1) Had[(1) Any utility with $5,000,000 or less] gross annual revenue in the immediate past calendar year of $5,000,000 or less;[may apply for an adjustment of rates using the procedure established in this administrative regulation.]

(2) Maintained[The applicant shall have maintained] adequate financial records fully separated from ***a[any]*** commonly-owned enterprise; and

(3) Filed[and shall have on file] with the commission fully completed annual reports for the immediate past year and for the two (2) prior years if ***the utility[it]***[the applicant] has been in existence that long.

Section 3. The Record upon which Decision Shall Be Made. The commission shall make its decision based on the:

(1) Applicant's annual report for the immediate past year and the annual reports for the two (2) prior years, if the ***utility[applicant]*** has been in existence that long;

(2) The application required by Section 4 of this administrative regulation;

(3) Information supplied by the applicant in response to requests for information submitted by other parties to the proceeding or the commission;

(4) Written reports submitted by commission staff;

(5) Stipulations and agreements between the parties and commission staff;

(6) Written comments and information that the parties to the proceeding submitted in response to the findings and recommen-

dations contained in ***a[any]*** written report that commission staff submitted; and

(7) If a hearing is held, the record of that hearing.

Section 4. Application. (1) An application for alternative rate adjustment shall consist of:

(a) A completed ARF Form-1 that is made under oath and signed by the applicant or an officer who is duly designated by the applicant and who has knowledge of the matters ***established[set forth]*** in the application;

(b) A copy of all outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, and bond resolutions;

(c) A copy of the amortization schedule for each outstanding bond issuance, promissory note, and debt instrument;

(d) A depreciation schedule of all utility plant in service;

(e) A copy of the most recent state and federal tax returns of the applicant, if the applicant is required to file returns;

(f) A detailed analysis of the applicant's customers' bills showing revenues from the present and proposed rates for each customer class;

(g) A copy of the notice of the proposed rate change that is provided to customers of the applicant;[and]

(h) A completed ARF Form-3 for each member of the utility's board of commissioners or board of directors, each person who has an ownership interest of ten (10) percent or more in the utility, and the utility's chief executive officer; and

(i)1. If the applicant is a corporation, a certified copy of its articles of incorporation and all amendments thereto, or a written statement attesting that its articles and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding;

2. If the applicant is a limited liability company, a certified copy of its articles of organization and all amendments thereto, or a written statement attesting that its articles and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding; or

3. If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments thereto, or a written statement attesting that its partnership agreement and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

(2) Except as provided in Section 13 of this administrative regulation for electronic filings, the applicant shall:

(a) Submit one (1) original and five (5) paper copies of its application to the executive director of the commission; and

(b) Deliver or mail one (1) paper copy to the Office of Rate Intervention, Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204 or transmit by electronic mail an electronic copy in portable document format to the Office of Rate Intervention at rateintervention@ag.ky.gov.

(3)(a) If the application contains an individual's Social Security number, taxpayer identification number, birth date, or a financial account number, the applicant shall redact the document so the following information cannot be read:

1. The digits of the Social Security number or taxpayer identification number;

2. The month and day of an individual's birth; and

3. The digits of the financial account number.

(b) To redact the document, the applicant shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(4) The application shall not contain any request for relief from the commission other than an adjustment of rates.

(5) A utility[An applicant] may make written request to the executive director for commission staff assistance in preparing the application.

Section 5. Notice to Customers of Proposed Rate Changes. (1) If the applicant has twenty (20) or fewer customers or is a sewage[sewer] utility, it shall:

(a) Mail written notice in accordance with[as required by] subsection (3) of this section to each customer no later than the date on which the application is filed with the commission;

(b) Post at its place of business no later than the filed date of the application a sheet containing the information provided in the written notice to its customers; and

(c) Keep the notice posted until the commission has issued a final decision on the application.

(2) An applicant that has more than twenty (20) customers and is not a sewage[sewer] utility shall post at its place of business a sheet containing the information required by subsection (3) of this section and shall:

(a) Include notice with customer bills mailed by the date the application is filed; [or]

(b) Publish notice in a trade publication or newsletter going to all customers by the date the application is filed;

(c) Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the applicant's[its] service area, the first publication to be made by the date the application is filed; or

(d) If it provides service in more than one (1) county, use a combination of the methods ***established[set forth]*** in this subsection.

(3) Each notice shall state[contain the following information]:

(a) The present rates and proposed rates for each customer class to which the proposed rates will apply;

(b) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;[(b) The present rates and the proposed rates for each customer class to which the proposed rates will apply;]

(c) The amount of the average usage and the effect upon the average bill for each customer class to which the proposed rate change will apply;

(d) That[A statement that] the rates contained in this notice are the rates proposed by (name of utility) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(e) That ***a***[A statement that]***[any]*** corporation, association, or person [with a substantial interest in the matter] may, within thirty (30) days after the initial publication or mailing of notice of the proposed rate change, submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, ***establishing[setting forth]*** the grounds for the request and including the status and interest of the party;***[and]***

(f) That ***a***[A statement that]***[any]*** person may examine this application at the main offices of (the name of the utility) located at (the utility's address) and on the utility's Web site at (the utility's Web site address), if the utility maintains a public Web site***;[,]*** and

(g) That[copies of the application may be obtained at no charge from (the name of the utility) at (the utility's address) and that] the application and all documents filed with the Public Service Commission may be viewed and downloaded at the Public Service Commission's Web site at http://psc.ky.gov/.

(4) Proof of notice. An applicant shall file with the commission no later than forty-five (45) days from the filed date of the application:

(a) If its notice is published in a newspaper of general circulation in the applicant's service area, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice; [or]

(b) If notice is published in a trade publication or newsletter going to all customers, an affidavit from an authorized representative of the utility verifying the trade publication or newsletter was mailed; or

(c) If the notice is mailed, an affidavit from an authorized representative of the utility[a written statement signed by the utility's chief executive officer] verifying the notice was mailed.

(5) If an applicant maintains a Web site, the applicant shall:

(a) Post on its Web site within seven (7) days of the filed date of the application:

1. A notice containing the information provided in the written notice to its customers; and

2. A hyperlink[link] to a copy of its application posted on the commission's Web site; and

(b) Keep both items posted until the commission has finally determined the utility's rates.

Section 6. Except as provided in Section 13 of this administrative regulation, an applicant shall not be required to provide the commission with advance notice of its intent to file an application for rate adjustment using the procedure ***established[~~set forth~~]*** in this administrative regulation.

Section 7. Effective Date of Proposed Rates. (1) An applicant shall not place ***the[~~its~~]*** proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of its application, whichever occurs first.

(2) If the commission has not issued its order within six (6) months from the date of filing of the application, the applicant may place its proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect.

(3) The applicant shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom is due a refund if the commission orders a refund.[~~.~~]

Section 8. Test Period. The reasonableness of the proposed rates shall be determined using a twelve (12) month historical test period, adjusted for known and measureable changes, that coincides with the reporting period of the applicant's annual report for the immediate past year.

Section 9. Discovery. (1) The minimum discovery available to intervening parties shall be as prescribed by this subsection.

(a) A party in the proceeding may serve written requests for information upon the applicant within twenty-one (21) days of an order permitting that party to intervene in the proceeding.

(b) ***Upon serving[~~At the time of serving its~~]*** requests upon the applicant, the party shall file a copy of ***the party's[~~its~~]*** requests with the commission and serve a copy upon all other parties.

(c) Within twenty-one (21) days of service of timely requests for information from a party, the applicant shall serve its written responses upon each party and shall file with the commission one (1) original and five (5) copies.

(2) The commission may establish different arrangements for discovery if it finds different arrangements are necessary to evaluate an application or to protect a party's rights to due process.

Section 10. Commission Staff Report. (1) Within thirty (30) days of the date that an application is accepted for filing, the commission shall enter an order advising the parties ***if[~~whether~~]*** commission staff will prepare a report on the application.

(2) If a commission staff report is prepared, the:

(a) Commission staff shall:

1. File the report with the commission; and

2. Serve a copy of the report on all parties of record; and

(b) Report shall contain the commission staff's findings and recommendations regarding the proposed rates.

(3)(a) Each party shall file with the commission a written response to the commission staff report within fourteen (14) days of the filing of the report.

(b) This written response shall contain:

1. All objections to and other comments on the findings and recommendations of commission staff;

2. ***A[~~Any~~]*** request for hearing or informal conference***, if applicable***;[~~and~~]

3. The reasons why a hearing or informal conference is necessary; and

4. If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or recommends the assessment of an additional rate or charge not proposed in the application, the filing party's position on ***if[~~whether~~]*** the commission should authorize the assessment of the higher rate or the recommended additional rate or charge.

(c) If a ***party's written response fails to contain an objection[~~party in its written response fails to object~~]*** to a finding or recommendation contained in the commission staff report, it shall be deemed to have waived ***all[~~any~~]*** objections to that finding or recommendation. A party's failure to request a hearing or informal conference in ***the party's[~~its~~]*** written response shall be deemed a waiver of ***all rights[~~any right~~]*** to a hearing on the application and a request that the case stand submitted for decision.

(d) If a party fails to file a written response with the commission within this time period, it shall be deemed to have waived ***all[~~any~~]*** objections to the findings and recommendations contained in the report and ***all rights[~~any right~~]*** to a hearing on the application.

(e) Acceptance of the findings and recommendations contained in the commission staff report by all parties in a proceeding shall not preclude the commission from conducting a hearing on the application, taking evidence on the applicant's financial operations, or ordering rates that differ from or conflict with the findings and recommendations ***established[~~set forth~~]*** in the commission staff report.

(f) If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or recommends the assessment of an additional rate or charge not proposed in the application ***and the proposed rates produce total revenues in excess of 115 percent of the total revenue that the applicant's proposed rates will produce***, the commission ***shall[~~may~~]*** order the applicant to provide notice of the finding or recommendation to its customers.

Section 11. Notice of Hearing. (1) If the commission orders a hearing, the applicant shall publish in a newspaper or mail to ***the applicant's[~~its~~]*** customers notice of the hearing.

(2) The notice shall state the purpose, time, place, and date of the hearing.

(3) Newspaper notice shall be published once in a newspaper of general circulation in the applicant's service area no fewer than seven (7) and no more than twenty-one (21) days prior to the hearing.

(4) Mailed notices shall be mailed at least fourteen (14) days prior to the date of the hearing.

Section 12. Utility Personnel Participation in Commission Proceedings. (1) An authorized official or employee of the applicant who is not licensed to practice law in Kentucky may, on behalf of an applicant that is a water district, corporation, partnership, or limited liability company, file the application, responses to commission orders and requests for information, as well as appear at conferences related to the application.

(2) ***An[~~Any~~]*** applicant that is a water district, corporation, partnership, or limited liability company shall, at ***a[~~any~~]*** hearing conducted on the application, be represented by an attorney who is authorized to practice law in Kentucky.

Section 13. Use of Electronic Filing Procedures in lieu of Submission of Paper Documents. (1) Upon an applicant's timely election of the use of electronic filing procedures, the procedures established in this section shall be used in lieu of other filing procedures ***established[~~set forth~~]*** in this administrative regulation[~~An applicant may elect to use electronic filing procedures in lieu of submission of paper documents to the commission~~].

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of ***the applicant's[~~its~~]*** election using the ARF Form-2; and

(b) If ***the applicant or its authorized agent[~~it~~]*** does not have an account for electronic filing with the commission, register for an account at http://psc.ky.gov/Account/Register.

(3) ***Each pleading, document, and exhibit***[~~Upon electing the use of electronic filing procedures, the procedures established in this section shall be followed in the commission proceeding on the application. (4)~~]***[~~All pleadings, documents, and exhibits~~]*** shall be filed with the commission by uploading an electronic version of the document using the commission's E-Filing System at http://psc.ky.gov. In addition, the filing party shall file the[~~one (1)~~] original[~~and one (1) paper copy~~] with the commission as required by subsection (11)[~~(12)~~] of this section.

(4)[~~(5)~~] Each file in an electronic submission shall be:

(a) In portable document format;

(b) Search-capable;

(c) Optimized for viewing over the Internet;

(d) Bookmarked to distinguish sections of the pleading or document; and

(e) If a scanned document, scanned at a resolution of no less than 300 dots per inch.

(5)[~~(6)~~](a) ***Each electronic submission[All electronic submissions]*** shall include an introductory file in portable document format that is named "Read1st" and that contains ***a***:

1. ***[A]***General description of the filing;

2. ***[A]***List of all materials not included in the electronic filing; and

3. ***[A]***Statement attesting that the electronically filed documents are a true representation of the original documents.

(b) The "Read1st" file and any other document that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the paper filing may be substituted for a general description.

(d) If the electronic submission does not include all documents contained in the paper version***[(e.g.,confidential materials, materials that are too large or bulky to transfer by electronic medium)]***, the absence of these documents shall be noted in the "Read1st" document.

(6)[~~(7)~~](a) An electronic transmission or uploading session shall not exceed twenty (20) files.

(b) An individual file shall not exceed fifty (50) megabytes.

(c) If a filing party's submission exceeds the limitations established in paragraph (a) or (b) of this subsection, the filing party[~~filer~~] shall make its electronic submission in two (2) or more consecutive electronic transmission or uploading sessions.

(7)[~~(8)~~] If filing ***a[any]*** document with the commission, the filing party shall certify that:

(a) The electronic version of the filing is a true and accurate copy of each document filed in paper medium;

(b) The electronic version of the filing has been transmitted to the commission; and

(c) A copy of the filing in paper medium has been mailed to all parties that the commission has excused from participation by electronic means.

(8)[~~(9)~~](a) Upon completion of a party's uploading of an electronic submission, the commission shall cause an electronic mail message to be sent to all parties of record advising that an electronic submission has been made to the commission.

(b) Upon a party's receipt of this message, it shall be the receiving party's responsibility to access the commission's electronic file depository at http://psc.ky.gov and view or download a copy of the submission.

(9)[~~(10)~~] Unless ***a party states an[it states its]*** objection to the use of electronic filing procedures in its motion for intervention, a party granted leave to intervene shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all documents and pleadings, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order of the commission granting ***the party's[its]*** intervention a written statement that:

1. ***The party waives the[It waives any]*** right to service of commission orders by United States mail; and

2. ***The party or the party's[It, or its]*** authorized agent, possesses the facilities to receive electronic transmissions.

(10)[~~(11)~~] If a party objects to the use of electronic filing procedures and ***if[the commission determines that]*** good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).

(11)[~~(12)~~](a) A document shall be considered timely filed with the commission if ***the document***:

1. ***[It]*** Has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements ***established in[imposed by]*** this administrative regulation and ***an[any]*** order of the commission; and

2. ***Is filed, in paper medium***[(b)]***[The original document, in paper medium, is]***[shall be]***[filed]*** at the commission's offices no later than the second business day following the electronic filing.

(b) ***Each party***[(c)]***[Parties]*** shall attach to the top of the paper submission a paper copy of the electronic mail message from the commission confirming transmission and receipt of ***the party's[its]*** electronic submission.

(12) Except as expressly provided in this section, a party making a filing in accordance with the procedures ***established[set forth]*** in this section shall not be required to comply with ***a[any]*** provision of this administrative regulation that requires service of ***a[any]*** document or material filed with the commission on other parties in the case.

Section 14. The provisions of 807 KAR 5:001, Sections 1 through 6, 9, 10, 11, and 13[~~5 and 7~~], shall apply to commission proceedings involving applications filed pursuant to this administrative regulation.

Section 15. Upon a showing of good cause, the commission may permit deviations from this administrative regulation. Requests for deviation shall be submitted in writing by letter to the commission.

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

(a) "***Application for Rate Adjustment before the Public Service Commission", ARF Form 1, September 2012;***

(b) "Notice of Election of Use of Electronic Filing", ARF Form 2, September 2011; and

(c) "Statement of Disclosure of Related Party Transactions", ARF Form 3, September 2012.[~~"ARF Form-1", September 2011; [and]~~

~~(b) "ARF Form-2", September 2011; and~~

~~(c) "ARF Form-3", July 2012.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov/.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: July 12, 2012

FILED WITH LRC: July 13, 2012 at 8 a.m.

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P. O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(As Amended at ARRS, November 13, 2012)

815 KAR 4:030. Elevator contractor licensing requirements.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4011, 198B.4023, 198B.4025, 198B.4027, 198B.4033

STATUTORY AUTHORITY: KRS ***198B.4009,*** 198B.4011, ***[~~198B.4009,~~]*** 198B.4023, 198B.4025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement ***[the provisions of]*** KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator contractors to be licensed, and KRS 198B.4011 provides the eligibility requirements to be met for issuance of an elevator contractor's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing educations requirements for elevator licensee renewals. KRS 198B.4027 provides the minimum insurance requirements for elevator contractor licensees. KRS 198B.4009(3) authorizes fees for the elevator licensure program to implement KRS 198B.400 through 198B.540. This administrative regulation establishes the licensure require-

ments for elevator contractors.

Section 1. General Requirements. (1) Supervision. The elevator contractor shall supervise generally, and be primarily responsible for, all elevator work performed by the mechanics, employees, and subcontractors of the licensee.

(2) Company license. A licensee who is an employee of a company and whose license represents the company shall notify the department, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on that license and paying the change of information fee established in Section 5(5)[~~6(5)~~] of this administrative regulation.

Section 2. Initial Application Requirements. (1) Filing the application.

(a) An applicant seeking an elevator contractor license shall submit to the department:

1. A completed, signed, and notarized Elevator Contractor License Application on Form EV-3;

2. An initial license application fee of $240 for a twelve (12) month license.

a. The initial license fee may be prorated.

b. If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months;

3. ***Proof of applicant's experience as required by KRS 198B.4011;***

4.[~~Proof of applicant's experience as required by KRS 198B.4011 and this administrative regulation;~~

~~4.~~] A recent passport-sized color photograph of the applicant; and

5[4].[~~5.~~] Proof of insurance as required by KRS 198B.4027.

(b) If the applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted.

(b) At the end of one (1) year, the application shall be void.

Section 3. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform elevator contracting work while the license is inactive.

(2) An elevator contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.4027 or provide proof to the Department of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) A certified elevator inspector may be licensed as an elevator contractor, but shall place the elevator contractor license in inactive status while having an active elevator inspector certification.

(4) Performing elevator contracting work while holding an inactive license shall be grounds for revocation or suspension of all elevator licenses and certifications held by the licensee.[~~Section 4. Experience Requirements. An applicant for licensure shall meet the experience requirements of this section.~~

~~(1) Minimum experience. An applicant shall have the experience required by KRS 198B.4015.~~

~~(2) Records of experience. An applicant's experience shall be listed on the application form or included with submission of application form to the department.~~

~~(a) Proof of listed experience shall be provided by W-2s.~~

~~(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient, falsified, or nonexistent.~~]

Section 4.[~~5.~~] ***Experience requirements. An applicant for licensure shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have:***

(a) A minimum of three (3) years of verifiable experience as an elevator mechanic; or

(b) A current license, certification, or registration as an elevator contractor in another state whose standards are substantially equal to those of this Commonwealth as established in KRS Chapter 198B and 815 KAR Chapter 4.

(2) Records of experience. An applicant's experience shall be listed on the application form or included with submission of application form to the department.

(a) Proof of listed experience shall be provided by W-2s.

(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient, falsified, or nonexistent.

Section 5. Renewal and Reactivation Requirements and Procedures. (1) Filing for renewal. Licenses shall be renewed each year. To renew a license, an elevator contractor shall submit to the department:

(a) A completed, signed and notarized Elevator License Renewal Application on Form EV-7[~~renewal application~~];

(b) A renewal fee of $240 made payable to the Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing provider evaluation forms for each continuing education class attended.

(2) [~~Except for a license placed in inactive status in accordance with subsection (5) of this section,~~] Each application for license renewal shall be filed by each licensee no later than the last day of the licensee's birth month.

(3) A renewal application filed late, but no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section ***(6)(1)[5(1)]***[~~6(1)~~] of this administrative regulation, shall be added to the annual renewal fee.

(4) Failure to renew within sixty (60) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 2 of this administrative regulation for reinstatement. A reinstatement fee, in accordance with Section ***6(2)[5(2)]***[~~6(2)~~] of this administrative regulation, shall be added to the annual renewal fee.

(5) Inactive elevator contractor status and renewal requirements.

(a) To place the elevator contractor's license in inactive status, an elevator contractor shall pay annually an inactive status fee of $120.

(b) An inactive elevator contractor shall not:

1.[(1)] Secure an elevator permit;[~~,~~]

2.[(2)] Advertise;[~~,~~] or

3.[(3)] Represent himself as an[~~a qualified~~] elevator contractor currently authorized to contract elevator work in the commonwealth.[~~(c) To reactivate an elevator contractor license, the inactive elevator contractor shall pay the annual renewal fee, an additional $120, and comply with the continuing education requirements established in 815 KAR 4:050.~~]

(6) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(7) Continuing education requirements shall not be required for renewal, ***if[provided]*** the initial license was issued within twelve (12) months of renewal.

(8) The application for renewal or reactivation of a licensed elevator contractor shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal, reactivation, and restoration, if applicable;

(b) Comply with elevator contractor continuing education requirements;***[or]***

(c) Provide the current insurance certificates required by KRS 198B.4027***; or[.]***

(d) File ***the*** renewal application as required by ***this*** section***[4 of this administrative regulation]***.

(9) To reactivate an elevator contractor license, the inactive elevator contractor shall pay the annual renewal fee, an additional

$120, and comply with the continuing education requirements established in 815 KAR 4:050.

Section ***6[5]***.[~~6.~~] Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be $100.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be $120.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

(5) Change of information fee.

(a) The fee for the change of information required by Section 1(2) of this administrative regulation shall be fifteen (15) dollars.

(b) If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section ***7[6]***.[~~7.~~] Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the department for any of the reasons established in KRS 198B.4033.

Section ***8[7]***.[~~8.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Elevator Contractor License Application", Form EV-3, October 2011; and[~~.~~]

(b) "Elevator License Renewal Application" Form EV-7, August 2012[~~is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator 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: August 10, 2012

FILED WITH LRC: August 10, 2012 at 4 p.m.

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.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(As amended at ARRS, November 13, 2012)

815 KAR 4:040. Elevator mechanic licensing requirements.

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4013, 198B.4023, 198B.4025

STATUTORY AUTHORITY: KRS ***198B.4009,*** 198B.4013,***[198B.4009,]*** 198B.4023, 198B.4025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement***[the provisions of]*** KRS 198B.400 to 198B.540. KRS 198B.4009(1) requires elevator mechanics to be licensed and KRS 198B.4013 provides the eligibility requirements to be met for issuance of an elevator mechanic's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education[~~educations~~] requirements for elevator licensee renewals. This administrative regulation establishes the licensure requirements for elevator mechanics and establishes procedures for license renewal.

Section 1. Initial Application Requirements. (1) Filing the application. An applicant seeking an elevator mechanic license shall submit to the department:

(a) A completed, signed, and notarized Elevator Mechanic License Application on Form EV-4;

(b) An initial license application fee of ninety-six (96) dollars for a twelve (12) month license.

1. The initial license fee may be prorated.

2. If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months;

(c) Proof of the applicant's experience as required by KRS 198B.4013 and this administrative regulation; and

(d) A recent passport-sized, color photograph of the applicant.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted.

(b) At the end of one (1) year, the application shall be void.

Section 2. Examination Requirements. If an applicant applies for licensure under the provisions of KRS 198B.4013(2)(a), the applicant shall take and pass the examination administered in compliance with this section. (1) The examination shall test the applicant's basic knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of elevators and elevator systems.

(2) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

(3) Except as provided by subsection (7) of this section, an applicant shall successfully complete with a passing score of at least seventy (70) percent the examination known as the "Kentucky Elevator Mechanic Examination", which is developed, administered, and scored by the department or its designee.

(4)(a) A request to sit for the examination shall be made directly to the department-approved testing facility.

(b) A list of facilities and contact information shall be provided to applicants following receipt of the examination application.

(5) The cost shall not exceed $100 for the Kentucky Elevator Mechanic Examination.

(6) A passing score on the examination shall be valid for a period of two (2) years.

(7) Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the department or department's designee[~~board~~] if the person or group submitting the examination demonstrates that the examinations cover the same material and require the same level of knowledge as the department's examinations.

Section 3. Experience Requirements. An applicant for licensure shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have the experience required by KRS 198B.4013(2).

(2) Records of experience.

(a) Proof of listed experience shall be provided by W-2s or an affidavit from a licensed elevator contractor or the equivalent.

(b) Additional proof of experience may be requested by the department, prior to or after licensing, if the department finds[~~board has~~] reason to believe that the experience shown is insufficient or nonexistent.

Section 4. Renewal Requirements and Procedures. (1) Filing for renewal. Each license shall be renewed each year. To renew a license, an elevator mechanic shall submit to the department:

(a) A completed, signed, and notarized Elevator License Renewal Application on Form EV-7[~~renewal application~~];

(b) A renewal fee of ninety-six (96) dollars made payable to the Kentucky State Treasurer;

(c) Proof of attendance and completion of eight (8) hours of annual continuing education prior to the application for renewal in accordance with KRS 198B.4025; and

(d) Completed continuing education provider evaluation forms for each continuing education class attended.

(2) Each[~~Except for a license placed in inactive status in ac-~~

~~cordance with subsection (6) of this section, an~~] application for license renewal shall be filed by each licensee no later than the last day of the licensee's birth month.

(3) A renewal fee of ninety-six (96) dollars shall be paid prior to renewal. The department shall send a renewal application to each licensee each year to be returned with the required fee.

(4) A renewal application filed late, but no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section 5(1) of this administrative regulation, shall be added to the annual renewal fee.

(5) Failure to renew by sixty-one (61) days after the last day of the licensee's birth month shall terminate the license, and the applicant shall comply with all requirements for a new license pursuant to Section 1 of this administrative regulation for reinstatement and a reinstatement fee, in accordance with Section 5(2) of this administrative regulation, shall be added to the annual renewal fee.

(6) Inactive elevator mechanic renewal.

(a) To place the elevator mechanic's license in inactive status, an elevator mechanic shall pay annually an inactive fee of forty-eight (48) dollars.

(b) An inactive elevator mechanic shall not perform work within the Commonwealth if the work requires a mechanic's license.[~~(c) To reactivate an elevator mechanic license, the inactive elevator mechanic shall pay the annual renewal fee, an additional forty-eight (48) dollars, and comply with the continuing education requirements established in 815 KAR 4:050.~~]

(7) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(8) Continuing education requirements shall not be required for renewal provided the initial license was issued within twelve (12) months of renewal.

(9) The application for renewal or reactivation of a licensed elevator mechanic shall be denied for incompleteness if the applicant fails to:

(a) Pay the fees required for renewal and restoration, if applicable;[~~or~~]

(b) Comply with elevator mechanic continuing education requirements; or

(c) File the renewal application as required by ***this*** section***[~~4 of this administrative regulation~~]***.

(10) Reactivation of Inactive Elevator Mechanic's License. To reactivate an elevator mechanic license, the inactive elevator mechanic shall pay the annual renewal fee, an additional forty-eight (48) dollars, and comply with the continuing education requirements established in 815 KAR 4:050.

Section 5. Special Services and Fees. In addition to the other fees required by this administrative regulation, the following special fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be twenty-five (25) dollars.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be twenty-five (25) dollars.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be forty-eight (48) dollars.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee.

Section 6. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the commissioner[~~board~~] for any of the reasons stated in KRS 198B.4033.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Elevator Mechanic License Application", Form EV-4, September, 2011; and

(b) "Elevator License Renewal Application", Form EV-7, August 2012[~~is herein incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Elevator 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: August 10, 2012

FILED WITH LRC: August 10, 2012 at 4 p.m.

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.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
(As Amended at ARRS, November 13, 2012)

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 ***requires[~~authorizes~~]*** the department to promulgate an administrative regulation to establish requirements for approval of continuing 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) ***fire sprinkler inspector*** course in each of ***Kentucky's[~~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) ***E-mail[~~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 ***a Certified Fire Sprinkler***

Inspector Continuing Education Course ***Approval[~~for Certified Fire Protection System Inspectors~~]***, for each course offered by the course provider.

(2)***[~~(a)~~]*** A Form FPS 33-33-04, Application for ***a Certified Fire Sprinkler Inspector*** Continuing Education Course ***Approval[~~for Certified Fire Protection System Inspectors~~]***, shall be***:***

(a) 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 ***to registrants*** 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 ***denied or*** 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:

(a) "Application for Approval as a Continuing Education Course Provider for Certified Fire ***Sprinkler[~~Protection System~~]*** Inspectors", Form FPS-33-03, September 2012; and

(b) "Application for ***a Certified Fire Sprinkler Inspector*** Continuing Education Course ***Approval[~~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: September 14, 2012

FILED WITH LRC: September 14, 2012

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
Office of Health Policy
(As amended at ARRS, November 13, 2012)

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(6)[~~216B.015(5)~~]***.

(2) "Days" means calendar days, unless otherwise specified.

(3) "Exempt physicians" means physicians that ***meet the exemption established in KRS 216B.020(2)(a) and 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 ***Including[,]*** 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 II[~~Annual Survey of Licensed Ambulatory Surgical Services~~];

(2) Kentucky Health Survey Registry 2012 Home Health II[~~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 Nursing[~~Annual Survey of Licensed Private Duty Nursing Agencies~~];

(6) Kentucky Health Survey Registry 2012 Long Term Care[~~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 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 ***a draft report to a facility for its[~~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) ***Each facility[~~The facilities~~]*** shall be notified of a ***Web site[~~website~~]*** and provided with a login identification and password required to access each applicable draft report and shall have fourteen (14) days to review ***the[~~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) ***A facility[~~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***, or[as well as]*** the discontinuation of any ***unit[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

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 Medicaid Services
Commissioner's Office
(As amended at ARRS, November 13, 2012)

907 KAR 14:005. Health care-acquired conditions and other provider preventable conditions.

RELATES TO: KRS 205.560***, 42 C.F.R. 447.26***

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 C.F.R. 447.26, 42 U.S.C. 1396a***[Title II, Subtitle I, Section 2702 of the Patient Protection and Affordable Care Act]***

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid program policies, including managed care and non-managed care, regarding health care-acquired conditions and provider preventable conditions.

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

(2) "Health care-acquired condition" is defined by 42 C.F.R. 447.26.

(3) "**In writing" means on paper or by electronic means.**

(4) "Inpatient hospital" means an acute care hospital, critical access hospital, long-term acute care hospital, psychiatric hospital, rehabilitation hospital, psychiatric distinct part unit in an acute care hospital, or rehabilitation distinct part unit in an acute care hospital.

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

(6)[(4)] "Provider" is defined by KRS 205.8451(7).

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

Section 2. Health Care-Acquired Conditions. (1) The department or a managed care organization shall not reimburse for medical assistance in any inpatient hospital setting for a health care-acquired condition.

(2) In accordance with 42 C.F.R. 447.26(d), if a health care-acquired condition occurs, **an inpatient[a]** hospital shall **report the health care-acquired condition to the department by:**

(a) Identifying the health care-acquired condition on a claim or document attached to or associated with the services or course of treatment provided to the recipient that was not a health care-acquired condition; or

(b) If not submitting a claim for services or a course of treatment provided to the recipient, *reporting[report]* the health care-acquired condition in writing to the department within twelve (12) months of the occurrence of the health care-acquired condition[~~:~~

~~(a) Identify, on the claim or document attached to or associated with the claim or course of treatment, the health care-acquired condition; and~~

~~(b) Submit the claim, a document associated with or regarding the claim, to the department within thirty (30) days of the occurrence of the health care-acquired condition~~].

Section 3. Other Provider Preventable Conditions. (1) The department or a managed care organization shall not reimburse for a:

(a) Wrong surgical or other invasive procedure performed on a recipient;

(b) Surgical or other invasive procedure performed on the wrong body part; or

(c) Surgical or other invasive procedure performed on the wrong person.

(2) In accordance with 42 C.F.R. 447.26, a provider who performs a procedure listed in subsection (1) of this section shall report it **to the department:**

(a) By indicating the procedure on a claim or document attached to or associated with a claim for services, other than the services related to the procedure, provided to the recipient; or

(b) In writing within twelve (12) months of the procedure if the provider does not submit a claim for payment to the department for services provided to the recipient[~~in writing, which shall include by electronic means or paper, to the department within thirty (30) days of performing the procedure~~].

(3) Subsection (1) and (2) of this section shall not apply to a nursing facility or an intermediate care facility for individuals with

an intellectual or[~~mental retardation or a~~] developmental disability.

Section 4. Compliance with 42 C.F.R. 447.26. The department's or managed care organization's reimbursement shall comply with 42 C.F.R. 447.26(c)(2) and (3).

Section 5. Supersede. If any policy stated in another administrative regulation within Title 907 of the Kentucky ***Administrative[Administration]*** Regulations contradicts a policy stated in this administrative regulation, the policy stated in this administrative regulation shall supersede the policy stated elsewhere within Title 907.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: October 3, 2012
FILED WITH LRC: October 3, 2012 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Mental Health and Mental Retardation Services
Division of Administration and Financial Management
(As Amended at ARRS, November 13, 2012)

908 KAR 3:050. Per diem rates.

RELATES TO: KRS 210.710, 210.720, 210.730
STATUTORY AUTHORITY: KRS 194A.050(1), 210.720(2), 210.750
NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) requires the secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance**,** and treatment for a facility operated by the cabinet at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to implement KRS 210.710 to 210.760, the Patient Liability Act of 1978. This administrative regulation establishes the patient cost per day for board, maintenance**,** and treatment at facilities operated by the cabinet.

Section 1. Facility Rates. (1) Facilities operated by the cabinet shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (3) 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~~]
Windsong		$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. ***The*** 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.
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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(As Amended at ARRS, November 13, 2012)

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;

(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 eligibity 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[~~11~~] 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.[~~11.~~] 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 ***8***[~~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.

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amended After Comments)

201 KAR 9:001. Definitions for 201 KAR Chapter 9[~~terms used in KRS 218A.172~~]

RELATES TO: KRS 218A.172, 311.530-311.620, 311.990
STATUTORY AUTHORITY: KRS 311.565(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licenses. This administrative regulation establishes the definitions for **201 KAR Chapter 9[~~terms used in KRS 218A.172~~]**.

Section 1. Definitions. **(1) "Administering a controlled substance or anesthesia immediately prior to or during surgery" means:**
(a) Administering a controlled substance or anesthesia immediately prior to surgery;
(b) Administering a controlled substance or anesthesia during surgery; or
(c) Dispensing a controlled substance for up to forty-eight (48) hours, or prescribing a controlled substance for up to seven (7) days, immediately following surgery if the controlled substance is being provided to the patient for the medically appropriate treatment of pain resulting from the surgery, whether the surgery or procedure is performed on an inpatient, outpatient or office basis.
(2) "Emergency situation" means any situation in which the prescriber reasonably determines that immediate medical treatment is necessary to appropriately and adequately address the individual's presenting medical condition, including those identified in KRS 218A.172(4)(b).
(3) "Health facility" is defined by KRS 216B.015(13).
(4) "Initial prescribing" means the first time that a practitioner prescribes a Schedule II controlled substance or a Schedule III controlled substance with hydrocodone to treat a specific medical condition, and related symptoms, for a particular patient, and does not include:
(a) A change in dose of that substance; or
(b) The subsequent prescribing of any other Schedule II controlled substance or Schedule III controlled substance containing hydrocodone by that practitioner, by another practitioner in the same integrated group practice as the practitioner, or by another practitioner providing coverage to the initially prescribing practitioner, who also has lawful access to the patient's medical record for the treatment of that same medical condition, and related symptoms.
(5) "Prescribe" means to issue a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, that:
(a) Is signed, given, or authorized by a licensee; and
(b) Does not include the direct administration of the drug or medicine to a patient in a licensed health facility.
(6) "Query the electronic monitoring system" means obtaining and reviewing KASPER data:
(a) For the twelve (12) month period immediately preceding the patient encounter for initial prescribing; or
(b) For the period since the most recent KASPER review for all prescribing that requires a subsequent review as required by KRS 218A.202(2).
(7) "Surgery" means an operative procedure, invasive procedure, delivery, or other procedure requiring conscious sedation for completion.[~~The following terms used in KRS 218A.172 are defined in the following manner:~~
~~(1) "Query the electronic monitoring system" means, in the setting of a licensed hospital, long term care facility or surgical center:~~
~~(a) The admitting physician, admitting the patient for observation, inpatient or outpatient purposes, obtaining and reviewing the KASPER immediately prior or promptly after the patient's admission to the hospital;~~
~~(b) The admitting physician placing the KASPER report into the patient chart for use by all practitioners in the hospital for that patient during that specific admission;~~
~~(c) Each practitioner reviewing the KASPER report in the patient chart before prescribing controlled substances during the course of that specific admission; and~~
~~(d) The discharging practitioner reviewing the KASPER report in the patient chart before prescribing controlled substances for up to seventy-two (72) hours upon the patient's discharge from the hospital.~~
~~(2) "During surgery" means the seventy-two (72) hour period immediately following surgery if the controlled substance is prescribed or the forty-eight (48) hour period immediately following surgery if the controlled substance is dispensed for the treatment of pain resulting from the surgery, whether the surgery is performed on an inpatient or outpatient basis.~~]

PRESTON P. NUNNELLEY, M.D., President
APPROVED BY AGENCY: November 14, 2012
FILED WITH LRC: November 15, 2012 at 11 a.m.
CONTACT PERSON: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the definitions for terms used in 201 KAR Chapter 9.
(b) The necessity of this administrative regulation: It is necessary to establish the definitions for terms used in 201 KAR Chapter 9.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the definitions for terms used in 201 KAR Chapter 9.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the definitions for terms used in 201 KAR Chapter 9.
(2) If this is an amendment to an existing regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation; Not Applicable.
(b) The necessity of the amendment to this administrative regulation; Not Applicable.
(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.
(d) How the amendment will assist in the effective administration of the statutes. Not Applicable.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that will affect all physicians licensed in the Commonwealth of Kentucky that prescribe controlled substances.
(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 this administrative regulation or amendment: Physicians will not have to take any required action 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 ques-

tion (3): The Kentucky Board of Medical Licensure will not charge a fee for compliance with regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Physicians will have definitions for the terms used in 201 KAR Chapter 9.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.172.

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amended After Comments)

201 KAR 9:250. Registration and oversight of pain management facilities.

RELATES TO: KRS 218A.175, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the requirements for registration and oversight for pain management facilities.

Section 1. Definitions. (1) **"Board" is defined by KRS 311.550(1).**

(2) "In good standing" means an active license to practice medicine or osteopathy that is not currently subject to any final order imposing any disciplinary sanction authorized by KRS 311.595, agreed order, or letter of agreement issued by or entered into with the board.

(3) "Pain management facility" is defined by KRS 218A.175(1).

(4) "Practitioner" means a licensed or certified health care practitioner who is legally authorized to prescribe or dispense controlled substances[~~(a) "Pain Management Facility" means a facility where the majority of the patients receiving treatment from the practitioners at the facility are provided treatment for pain that includes the use of controlled substances, and:~~

~~1. The facility's primary practice component is the treatment of pain; or~~

~~2. The facility advertises in any medium for any type of pain management services.~~

~~(b) If a facility meets the criteria outlined in paragraph (a) of this subsection, it will be considered a "pain management facility" regardless of whether the owners or operators of the facility have designated the facility as an "urgent treatment center," "internal medicine practice," "general medicine practice," "family practice," "private clinic," or some other type of practice.~~

~~(c) "Pain Management Facility" does not include the following:~~

~~1. A hospital defined in KRS Chapter 216, a facility owned by the hospital, or the office of a hospital-employed physician;~~

~~2. A school, college, university, or other educational institution or program to the extent that it provides instruction to individuals preparing to practice as physicians, podiatrists, dentists, nurses, physician assistants, optometrists, or veterinarians;~~

~~3. A hospice program or residential hospice facility licensed under KRS Chapter 216B;~~

~~4. An ambulatory surgical center licensed under KRS Chapter 216B; or~~

~~5. A long-term-care facility licensed under KRS Chapter 216.510.~~

~~(2) For the purposes of subsection (1) of this section, "practitioner" includes physicians, nurses, physician assistants, acupuncturists and any other licensed health care practitioner.~~

~~(3) "Cabinet" means the Cabinet for Health and Family Services.~~

~~(4) "Board" means the Kentucky Board of Medical Licensure.~~

~~(5) "License in good standing" means an active license to practice medicine or osteopathy that is not currently subject to any final order, agreed order, emergency order, interim agreed order of any nature, or letter of agreement issued by or entered into with the Board~~].

Section 2. Ownership or Investment Interest. (1)(a)**[~~No person, other than a physician who is currently licensed to practice medicine or osteopathy within the Commonwealth of Kentucky and whose Kentucky medical or osteopathic license is presently in good standing, shall have an ownership or investment interest in a pain management facility that is formed or comes into existence after April 24, 2012, or in a pain management facility existing on April 24, 2012, if there has been an administrative sanction or criminal conviction relating to controlled substances imposed upon the facility or upon any person employed by the facility for an act or omission done within the scope of the facility's licensing or the person's employment.~~**

~~(b) Any person may have an ownership or investment interest in a pain management facility that was in existence and operating on April 24, 2012, unless there is an administrative sanction or criminal conviction relating to controlled substances imposed upon the facility or upon any person employed by the facility for an act or omission done within the scope of the facility's licensing or the person's employment. If the facility or one (1) or more of its employees sustains such an administrative sanction or criminal conviction, only a physician licensed in good standing in Kentucky may have an ownership or investment interest in the facility from the date~~

~~of the sanction or conviction forward.~~

~~(c) Credit extended by a financial institution as defined in KRS 136.500 to the facility shall not be deemed an investment interest under this subsection.~~

~~(d)~~] A physician who has an ownership or investment interest in a pain management facility during any period when the physician is not licensed to practice medicine or osteopathy within the Commonwealth of Kentucky shall be deemed to be**:**

1. In violation of KRS 311.595(12)**;** and

2.[~~shall be deemed to be~~] Practicing medicine without a license and subject to criminal sanctions.

(b) If the board determines that a physician has maintained an ownership or investment interest in a pain management facility during a period when that physician was not licensed to practice medicine or osteopathy within the Commonwealth of Kentucky, it may deny an application for licensing filed by that physician or may take appropriate disciplinary action against a license previously issued to the physician.

(2)[~~(e)~~] A physician who maintains an ownership or investment interest in a pain management facility during any period when **the physician's**[~~their~~] Kentucky license is not in good standing shall be in violation of KRS 311.595(12) and subject to disciplinary action by the Board.

Section 3. Divestiture of Ownership or Investment Interest. (1) A physician who has an ownership or investment interest in a pain management facility shall immediately divest[~~himself of~~] that ownership or investment interest **if**[~~when~~]:

(a) The physician's Kentucky license is no longer active for any reason; **or**[~~and/or~~]

(b) The physician's Kentucky license becomes subject to any final order **imposing any disciplinary sanction authorized by KRS 311.595**, agreed order,[~~emergency order, interim agreed order of any nature,~~] or letter of agreement issued by or entered into with the board.

(2)(a) If a physician fails to immediately divest[~~himself of~~] the ownership or investment interest in the pain management facility as required by subsection (1) of this section, the board may institute an action for injunctive relief pursuant to KRS 311.605(3) and (4) to require the physician to immediately divest[~~himself of~~] the ownership or investment interest in the pain management facility.

(b) An unlawful ownership or investment interest in a pain management facility shall be considered the unlawful practice of medicine and shall be considered to cause irreparable injury to the Commonwealth, acting through this board.

Section 4. Registration; Amended Registration; Fee**; New Facility Registration**. (1)[~~(a)~~] On or before **September**[~~August~~] 1, 2012 and **September**[~~August~~] 1 of each succeeding year, every pain management facility operating as the private office or clinic of a physician within the Commonwealth of Kentucky shall register with the board, providing the following specific information in writing:

(a)[~~1.~~] The name, business address, profession, current professional licensing status and nature and extent of ownership or investment interest of each person who has or maintains an ownership or investment interest in the pain management facility[~~. For each person who has or maintains an ownership or investment in the pain management facility, the facility will report whether that person has an ownership or investment interest in any other pain management facility operating within the Commonwealth of Kentucky and, if so, the name and address of the other pain management facility(ies) in which the person has an ownership or investment interest~~];

(b)[~~2.~~] The names and addresses of every[~~practice location owned and operated by that~~] pain management facility **in which the person has an ownership or investment interest**;

(c)[~~3.~~] The hours of operation of every[~~practice location owned and operated by that~~] pain management facility **in which the person has an ownership or investment interest**;

(d)[~~4.~~] The names and professional status of each employee at each practice location owned and operated by that pain management facility;

(e)[~~5.~~] The name, professional license number**,** and practice address of the **qualified** physician owner or owner's **physician** designee who[~~is a physician and~~] will be physically present practicing medicine in the pain management facility for at least fifty (50) percent of the time patients are present at the facility. The facility shall also state its plan for ensuring that the designated physician owner or owner's physician designee will be physically present practicing medicine in the facility and, if the facility owns and operates multiple practice locations, the plan to ensure that a physician owner or owner's physician designee is physically present practicing medicine in each practice location for at least fifty (50) percent of the time that patients are seen at each **pain management facility**[~~practice location~~];

(f)[~~6.~~] For each owner's physician designee who will fulfill the oversight responsibility, an attestation that the physician designee is employed by the owner and the plan for owner supervision of the physician designee; **and**

(g)[~~7.~~] An attestation by the physician owner that the owner or owner's physician designee**:**

1. Meets one (1) of the **requirements established in KRS 218A.175(3) and**[~~following qualifications for fulfilling the oversight responsibility,~~] specifying each qualification met by the physician owner or owner's physician designee**; or**

2.[~~:~~

~~a. Holds a current subspecialty certification in pain management by a member of the American Board of Medical Specialties;~~

~~b. Holds a current certificate of added qualification in pain management by the American Osteopathic Association Bureau of Osteopathic Specialists;~~

~~c.. Holds a current subspecialty certification in hospice and palliative medicine by a member board of the American Board of Medical Specialties;~~

~~d. Holds a current certificate of added qualification in hospice and palliative medicine by the American Osteopathic Association Bureau of Osteopathic Specialists;~~

~~e. Holds a current board certification by the American Board of Pain Medicine;~~

~~f. Holds a current board certification by the American Board of Interventional Pain Physicians;~~

~~g. Has completed an accredited fellowship in pain management; or~~

~~h.~~] Was an owner **of**[~~or practiced in~~] that specific pain management facility prior to and continuing through July 20, 2012 and meets **one (1) of** the following qualifications:

a. Successfully completed a residency program in physical medicine and rehabilitation, anesthesiology, addiction medicine, neurology, neurosurgery, family practice, preventive medicine, internal medicine, surgery, orthopedics or psychiatry approved by the Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS); or

b.(i) Registered the ownership or investment interest in that pain management facility with this board on or before September 1, 2012;

(ii)[~~Completed an accredited residency which included a component in the practice of pain management;~~

~~(ii) Practiced in the specialty of pain management during the five-year period preceding July 20, 2012;~~

~~(iii)~~] Is eligible for and has provided the board with written verification that the licensee has registered to complete the certification examination offered by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians in April 2013; and

(iii)[~~(iv)~~] Becomes certified by the American Board of Pain Medicine or by the American Board of Interventional Pain Physicians by September 1, 2013.

(2) If the physician fails the certification examination or fails to become certified by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians by September 1, 2013, the physician **shall**[~~must~~] meet one (1) of the requirements **established in KRS 218A.175(3)**[~~of clauses a. to f. of this subparagraph~~], to continue to be qualified to provide the on-site supervision required by Section 6 of this administrative regulation.

(3)[~~(2)~~] At the time of filing of the registration required by sub-

section (1) of this section, each pain management facility operating as the private office or clinic of a physician shall pay an annual fee of **$500 for each pain management facility[$1,000.00]** to the board to defray the costs of registration and enforcement of this administrative regulation.

(4)[(3)] If, during the effective period of the annual registration, a new or different physician obtains an ownership or investment interest in the pain management facility, or there is a change in the physician owner or physician designee who will practice on-site at least fifty (50) percent of the time the facility is open to patients, the facility shall file an amended registration with the board identifying these physicians and providing the information required by subsection (1) of this section about the new or different physicians, within **fourteen (14) calendar[ten (10)]** days of that change.

(5)[(4)] Failure to file the required registration or to pay the annual fee on or before August 1 of each year shall constitute a violation of KRS 311.595(12) and **shall[will]** serve as a basis for discipline by the board against the license of any physician who has an ownership or investment interest in the facility that failed to file the required registration.

(6) If a new pain management facility operating as the private office or clinic of a physician comes into existence after September 1 of a calendar year but before September 1 of the following calendar year, that new pain management facility shall register with the board within fourteen (14) calendar days of its legal formation, and shall meet each of the registration requirements of this section.

Section 5. Identification and Qualifications of Prescribers Employed by the Facility; Notification of Changes. (1) As part of its initial **or[and]** annual registration, the facility shall identify each **practitioner[physician]**, who is employed by the facility in any capacity, who will be prescribing or dispensing controlled substances to patients of the facility.

(2) Each licensed physician who will prescribe or dispense controlled substances to patients of the facility as part of **the[their]** employment arrangement with the facility **shall successfully complete a minimum of ten (10) hours of Category I continuing medical education in pain management during each registration period throughout the employment agreement with the facility. This continuing medical education requirement shall satisfy the requirement of 201 KAR 9:310[must be board certified throughout the period they are prescribing or dispensing controlled substances to patients of the facility]**.

(3) **A[No]** licensed physician **shall not[may]** prescribe or dispense controlled substances to patients of the facility if the physician has:

(a) Had an application for a license or certificate to prescribe, dispense, or administer controlled substances denied in any jurisdiction or by any governmental agency;

(b) Had a Drug Enforcement Administration permit to prescribe, dispense**,** or administer controlled substances revoked;

(c) Had **the[their]** professional ability or authority to prescribe or dispense controlled substances revoked, restricted, or limited in any manner by a licensing authority of any state**, except as provided by subsection (4) of this section**; or

(d) Been convicted of or entered a plea of guilt, nolo contendere**,** or Alford plea, regardless of adjudication, to any felony or misdemeanor relating to controlled substances, in any state or federal court.

(4) **The prohibition established in subsection (3)(c) of this section shall not apply if:**

(a) The conduct requiring the revocation, restriction, or limitation was directly related to the physician's impairment as a result of controlled substance abuse or dependence;

(b) The order imposing the revocation, restriction, or limitation is no longer in effect;

(c) The physician has achieved a level of recovery which provides the licensing authority sufficient assurance that the physician will not likely engage in similar conduct while practicing at the pain management facility; and

(d) The board or its panel has specifically approved the physician to practice in that specific pain management facility.

(5)[Any time a licensed physician with the responsibility to prescribe or dispense controlled substances to patients of the facility leaves the employment of the facility or is hired by the facility,] The facility shall notify the board in writing within ten (10) days of each change in physician staffing of the facility.

Section 6. On-site Supervision. (1) **If[At least one (1) of the physician owners of the pain management facility, or an owner's designee who meets the qualifications established by this administrative regulation, shall be physically present and practicing medicine or osteopathy in each practice location of the pain management facility for at least fifty (50) percent of the time that patients are present at the practice location(s) of the facility.**

(2) If, for whatever reason,] the physician owner or qualified designee is not present in each practice location of a pain management facility for at least fifty (50) percent of the time that patients are present at the practice **location[location(s) of the facility]** for any given calendar week **as required by KRS 218A.175(3)**, the facility shall immediately notify the board of that fact in writing and include the reasons**[for the noncompliance]**.

(3) Any violation of this section shall constitute a violation of KRS 311.595(12) and (9), as illustrated by KRS 311.595(3) and (4) by the physician owner and, if applicable, the qualified designee who was responsible for being present at the practice location during that period.

Section 7.**[Methods of Payment. (1) Each pain management facility shall accept private health insurance as one (1) of the facility's allowable forms of payment for goods and services provided, so long as the goods or services provided are covered items under the applicable health insurance plan.**

(2) Each pain management facility shall accept payment for services rendered or goods provided to a patient only from the patient or from the patient's insurer, guarantor, spouse, parent, guardian, or legal custodian.

Section 8.] Record-Keeping; Inspection. (1) Each pain management facility shall document on a weekly basis that a physician owner or an owner's physician designee who is employed by and under the direct supervision of the owner was physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients were present in the facility during that week. **This[Such]** documentation shall include:

(a) The name, practice address, and phone number of the physician owner or physician designee who fulfilled this oversight function for that specific week;

(b) The practice address of each practice location owned and operated by that pain management facility;

(c) The days and hours each practice location of the pain management facility was open to patients during that specific week; **and**

(d) The days and hours the physician owner or physician designee was present in each practice location for the pain management facility for that specific week**[; and**

(e) A listing of the patients treated by the physician owner or physician designee during that specific week].

(2) Each pain management facility shall **maintain appropriate records of the patients receiving treatment at that facility so that the board may determine the identity and number of patients treated during any given time period[also utilize and maintain daily sign-in sheets, that include the legible name of each patient seen by the practice or facility on that day, for each and every day that the practice or facility is open to patients or the public, for each practice location of the practice or facility]**.

(3) The pain management facility shall maintain the weekly reports required by subsection (1) of this section**[and the daily sign-in sheets required by subsection (2) of this section]** on site in a readily accessible location for a minimum period of six (6) years.

(4) Upon request by an employee or agent of the board, the pain management facility shall permit the board employee or agent to inspect and copy the weekly reports**[and daily sign-in sheets]** maintained on site.

(5) For the purpose of enforcing the provisions of this administrative regulation, **an agent[agents]** of the board shall have the power and authority to:

(a) Enter upon professional premises during periods when those premises are otherwise open to patients or the public;

(b) Obtain evidence, including**[but not limited to]** psychiatric or nonpsychiatric patient records, by consent or pursuant to a subpoena or search warrant;

(c) Interview all persons including owners, employees, or patients; and

(d) Require the production of books, papers, documents, or other documentary evidence either by consent or pursuant to a subpoena or search warrant.

Section **8[9]**. Proof of Operation of a Pain Management Facility. (1) The board may establish sufficient proof that a clinic, practice, or facility is a pain management facility subject to the provisions of this administrative regulation by establishing that:

(a) The facility has filed a registration with the board as a pain management facility; or

(b) **The facility met the definition of a pain management facility[1. For any selected thirty (30) day period, the majority of patients listed on the daily sign-in sheets maintained by the clinic, practice, or facility received controlled substances or a prescription for controlled substances during that period; and**

2. One (1) of the following additional conditions was present during that thirty (30) day period:

a. A primary component of the practice was the treatment of pain; or

b. The facility advertised in any medium for any type of pain management services].

(2) The board may establish sufficient proof that the majority of patients **treated in the facility for any[listed on the daily sign-in sheets for the]** specified thirty (30) day period received controlled substances or a prescription for controlled substances on their visit by comparing the names on the sign-in sheet to the KASPER report for that thirty (30) day period.

Section 9.**[Physical Environment. (1) Each pain management facility shall meet each of the requirements for the physical environment of the facility as set out in 902 KAR 20:420.**

(2) Each individual failure of a physician who has an ownership or investment interest in a pain management facility to fully comply with the requirements of 902 KAR 20:420, Section 9, shall constitute a separate violation of KRS 311.595(9) and (12).

Section 10.] Violations; Enforcement; Emergency Action. (1) Any violation of the requirements of this administrative regulation shall constitute a violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(4) and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3) given the circumstances.

(2) In order to lawfully prescribe or dispense controlled substances within the Commonwealth of Kentucky while practicing at a pain management facility, a licensee **shall[must]** practice in a lawful pain management facility.

(3) A pain management facility shall be considered an unlawful pain management facility if it:

(a) Permits **an** unqualified **person[persons]** to gain or maintain an ownership or investment interest in the pain management facility; or

(b) Fails to ensure that a qualified physician owner or physician designee is physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients are present in the facility.

(4) Prescribing or dispensing controlled substances within the Commonwealth of Kentucky while employed by or practicing in an unlawful pain management facility within the Commonwealth of Kentucky shall constitute a violation of KRS 311.595(9) and (12) which constitutes an immediate danger to the public health, safety, or welfare of the public, for the purposes of KRS 311.592 and 13B.125.

(5) If the board receives proof that a licensed physician is prescribing or dispensing **a** controlled **substance[substances]** while employed by or practicing in an unlawful pain management facility within the Commonwealth of Kentucky, the appropriate inquiry panel or its chair shall promptly issue an emergency order restricting that licensee from prescribing or dispensing **a** controlled **substance[substances]** within the Commonwealth of Kentucky until**[such time as]** the licensee has provided sufficient proof that **the licensee is[they are]** no longer employed by or practicing in an unlawful pain management facility.

(6) An emergency order restricting a licensee from prescribing or dispensing **a** controlled **substance[substances]** within the Commonwealth of Kentucky issued pursuant to subsection **(5)[(3)]** of this section shall remain valid and in effect until the board has received sufficient proof that the licensee is no longer employed by or practicing in an unlawful pain management facility. Upon receipt of **that[such sufficient]** proof, the panel or its chair **shall[will]** immediately issue an order terminating the emergency order issued pursuant to **subsection (5) of** this section.

(7) If a licensee who is affected by an emergency order issued pursuant to **subsection (5) of** this section requests an emergency hearing pursuant to KRS 13B.125(3), the hearing officer conducting the emergency hearing shall affirm the emergency order if presented with substantial evidence that the licensee was prescribing or dispensing controlled substances within an unlawful pain management facility.

(8) If a licensee **prescribes or dispenses a controlled substance[should prescribe or dispense controlled substances]** within the Commonwealth of Kentucky during any period when the licensee is employed by or practicing in an unlawful facility, each instance of prescribing or dispensing shall constitute a separate violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(1)(b) and **shall[will]** serve as the basis for disciplinary sanctions pursuant to KRS**[Chapter]** 311.595.

Section **10.[11.]** Periodic KASPER Reviews. (1) The board shall have the authority pursuant to KRS 218A.202 and 218A.240 to obtain KASPER reports and analyses for **each practitioner[practitioners]** practicing in **a** pain management **facility[facilities]**.

(2) At least once each year, the board shall obtain a KASPER review and analysis for each physician who has or maintains an ownership or investment interest in, or is employed by, or practices in, a pain management facility to determine whether improper, inappropriate, or illegal prescribing is occurring. If the board determines that there is evidence to indicate that improper, inappropriate, or illegal prescribing is occurring, it **shall[will]** initiate an investigation of that physician and notify the appropriate agencies of its investigation.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 15, 2012 at 11 a.m.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for registration and oversight of pain management facilities.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for registration and oversight of pain management facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish requirements for registration and oversight of pain management facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for

registration and oversight of pain management facilities.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a new administrative regulation that will affect anyone that has an ownership or interest in a pain management facility.

(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 this administrative regulation or amendment: Registration will be required for pain management facilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The registration fee is $2,000 per year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pain management facilities will be regulated and controlled so as to curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: $100,000.

(b) On a continuing basis: $100,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: Fees generated from registration of pain management facilities will provide the source of funding.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish a fee of $2,000 per year for the registration of pain management facilities.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.175.

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amended After Comments)

201 KAR 9:260. Professional standards for prescribing and dispensing controlled substances.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licenses. This administrative regulation establishes the professional standards for prescribing and dispensing controlled substances. Each physician who is authorized to prescribe or dispense controlled substances shall conform to the following mandatory professional standards relating to controlled substances while practicing within the Commonwealth of Kentucky. **The following standards shall be considered the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky for prescribing and dispensing controlled substances for the various conditions or settings described, subject to the enumerated exceptions.**

Section 1. Exceptions. (1) **These exceptions do not apply to the standards Schedule II Controlled Substances and Schedule III Controlled Substances with hydrocodone established in KRS 218A.172.**

(2) The professional standards established in this administrative regulation shall not apply to physicians prescribing or dispensing controlled substances:

(a) To a patient as part of the patient's hospice or end-of-life treatment;

(b) To a patient admitted to a licensed hospital as an inpatient, outpatient, or observation patient, during and as part of a normal and expected part of the patient's course of care at that hospital;

(c) To a patient for the treatment of pain associated with cancer or with the treatment of cancer;

(d) To a patient who is a registered resident of a long-term-care facility as defined in KRS 216.510;

(e) During the effective period of any period of disaster or mass casualties which has a direct impact upon the physician's practice;

(f) In a single dose prescribed or dispensed to relieve the anxiety, pain, or discomfort experienced by that patient submitting to a diagnostic test or procedure; or

(g) That have been classified as a Schedule V controlled substance.

Section 2. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes and Monitoring. (1) Each physician prescribing or dispensing controlled substances shall obtain and document all relevant information in a patient's medical record in a legible manner and in sufficient detail to provide for:

(a) This board to determine whether the physician is conforming to professional standards for prescribing or dispensing controlled substances and other relevant professional standards;

(2) If a physician is unable to conform to professional standards for prescribing or dispensing controlled substances due to circumstances beyond their control, or the physician makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the physician shall only prescribe or dispense

controlled substances to the patient when the patient record appropriately justifies the prescribing or dispensing of controlled substances under the circumstances.

Section 3. Professional Standards for the Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. (1) Prior to the initial prescribing or dispensing of any controlled substance for pain or other symptoms associated with the same primary medical complaint, the first physician prescribing or dispensing controlled substances shall:

(a) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and conduct a physical examination of the patient relevant to the medical complaint and related symptoms, for all medical complaints other than psychiatric conditions, and document the information in the patient's medical record. Psychiatrists, or other designated mental health providers, shall perform an evaluation appropriate to the presenting complaint and document relevant findings;

(b) Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the patient encounter, and appropriately utilize that information in the evaluation and treatment of the patient;

(c) After examining the benefits and risks of prescribing or dispensing controlled substances to the patient, including nontreatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substances in the amount specified;

(d) Not prescribe or dispense long-acting or controlled-release opioids (e.g. OxyContin, fentanyl patches, and methadone) for acute pain that is not directly related to and close in time to a specific surgical procedure;

(e) Explain to the patient that controlled substances used to treat an acute medical complaint are for time-limited use, and that the patient should discontinue the use of controlled substances when the condition requiring the controlled substance use has resolved; and

(f) Explain to the patient how to safely use and properly dispose of any unused controlled substances.

Section 4. Professional Standards for Commencing Long Term Use of Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. (1) Before a physician commences to prescribe or dispense any controlled substance to a patient sixteen (16) years or older for pain or other symptoms associated with the same primary medical complaint for a total period of longer than three (3) months, the physician shall comply with the following mandatory professional standards. These standards may be accomplished by different licensed practitioners in a single group practice at the direction of or on behalf of the prescribing physician so long as:

(a) Each practitioner involved has lawful access to the patient's medical record;

(b) There is compliance with all applicable standards;

(c) Each practitioner performing an action to meet the required standards is acting within their legal scope of practice.

(2)(a) The physician shall obtain the following information from the patient and record all relevant information in the patient's medical record:

1. History of present illness;

2. Past medical history;

3. History of substance use and any prior treatment for such use by the patient, and history of substance abuse by first degree relatives of patient;

4. Past family history of relevant illnesses and treatment; and

5. Psychosocial history.

(b) The physician shall conduct an appropriate physical examination of the patient sufficient to support the medical indications for prescribing or dispensing controlled substances on a long-term basis.

(c) The physician shall perform appropriate baseline assessments to establish beginning values to assist in establishing and periodically evaluating the functional goals of any treatment plan.

(d) If a specific or specialized evaluation is necessary for the formulation of a working diagnosis or treatment plan, the physician shall only continue the use of controlled substances after determining that continued use of controlled substances is safe and medically appropriate in the absence of such information.

(e) If the physician determines that the patient has previously received medical treatment for the presenting medical complaint or related symptoms and that review of the prior treatment records is necessary to justify long-term prescribing of controlled substances, the physician shall obtain those prior medical records and incorporate the information therein into the evaluation and treatment of the patient.

(f)1. Based upon consideration of all information available, the physician shall promptly formulate and document a working diagnosis of the source of the patient's medical complaint and related symptoms. It is not sufficient to simply describe or list the related symptoms.

2. If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician shall consider the usefulness of additional information, such as specialized evaluations or assessments, referral to appropriate specialists, usefulness of further observation and evaluation, before attempting again to formulate a working diagnosis.

3. If the physician is unable to formulate a working diagnosis, despite the use of appropriate specialized evaluations or assessments, the physician shall only provide long term use of controlled substances after establishing that such use at a specific level is medically indicated and appropriate.

(g)1. To the extent that functional improvement is medically expected based upon the patient's condition, the physician shall formulate an appropriate treatment plan.

2. The treatment plan shall include specific and verifiable goals of treatment, with a schedule for periodic evaluations.

(h)1. The physician shall utilize appropriate screening tools to screen each patient to determine if the patient is presently suffering from another medical condition which may impact the prescribing or dispensing of controlled substances, or presents a significant risk for illegal diversion of controlled substances.

2. If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from substance abuse or dependence, or a psychiatric or psychological condition, the physician shall take the necessary actions to facilitate a referral to an appropriate treatment program or provider. The physician shall appropriately incorporate the information from the treatment program or provide into the evaluation and treatment of the patient.

3. If, after screening, the physician determines that there is a risk that the patient may illegally divert controlled substances, but determines to continue long term prescribing of controlled substances, the physician shall use a "prescribing agreement," that meets professional standards. The "prescribing agreement" and informed consent document may be combined into one (1) document.

4. The physician shall obtain and document a baseline drug screen.

5. If, after screening, the physician determines that the controlled substances prescribed to the patient will be used or are likely to be used other than medicinally or other than for an accepted therapeutic purpose, the physician shall consider whether or not it is appropriate to commence prescribing controlled substances to that patient.

(i) After explaining the risks and benefits of long-term use of controlled substances, the physician shall obtain the written informed consent of the patient in a manner that meets professional standards.

(j) The physician shall initially attempt, to the extent possible, or establish and document a previous attempt by anoth-

er physician, of a trial of noncontrolled modalities and lower doses of controlled substances in increasing order to treat the pain and related symptom associated with the primary medical complaint, before continuing with long term prescribing of controlled substances at a given level.

Section 5. Professional Standards for Continuing Long Term Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. (1) If a physician continues to prescribe or dispense controlled substances beyond three (3) months to a patient sixteen (16) years or older for pain and related symptoms associated with the primary medical complaint, the physician shall comply with the following professional standards. These standards may be accomplished by different licensed practitioners in a single group practice at the direction of or on behalf of the prescribing physician as set forth in Section 4(1) of this administrative regulation.

(a)1. The physician shall ensure that the patient is seen at least once a month initially for evaluation and review of progress. The physician may determine that the patient is to be evaluated less frequently, on a schedule determined by the physician's professional judgment after the physician has determined:

a. The controlled substances prescribed or dispensed have been titrated to the level appropriate and necessary to treat the medical complaint and related symptoms;

b. The controlled substances prescribed or dispensed are not causing unacceptable side effects; and

c. There is sufficient monitoring in place to minimize the likelihood that the patient will use the controlled substances in an improper or inappropriate manner or divert them for an improper or inappropriate use.

(b) At appropriate intervals, the physician shall ensure that a current history is obtained from the patient, shall ensure that a focused physical examination is considered, and performed, if appropriate, and shall perform appropriate measurable examinations as indicated in the treatment plan.

(c) At appropriate intervals, the physician shall evaluate the working diagnosis and treatment plan based upon the information gained to determine whether there has been functional improvement or any change in baseline measures. If appropriate, the physician shall modify the diagnosis, treatment plan, or controlled substances therapy, as appropriate.

(d) If the physician determines that the patient presents a significant risk of diversion or improper use of controlled substances, the physician shall discontinue the use of controlled substances or justify their continued use in the patient record.

(e) If the medical complaint and related symptoms continue with no significant improvement in function despite treatment with controlled substances, where improvement is medically expected, the physician shall obtain appropriate consultative assistance to determine whether there are undiagnosed conditions that must be addressed to resolve the medical complaint.

(f) For patients exhibiting symptoms suggestive of mood, anxiety, and/or psychotic disorders, the physician shall obtain psychiatric or psychological consultations for intervention if appropriate.

(g) If a patient reports that they are experiencing episodes of "breakthrough" pain, the physician shall:

1. Attempt to identify the trigger or triggers for such episodes;

2. Determine whether the breakthrough pain may be adequately treated through noncontrolled treatment;

3. If the physician determines that the nonmedication treatments do not adequately address the triggers, and after considering the risks and benefits, the physician determines to add an as-needed controlled substance to the regimen, the physician shall take appropriate steps to minimize the improper or illegal use of the additional controlled substances.

(h) At least once a year, the physician shall perform or shall ensure that the patient's primary treating physician performs preventive health screening and physical examination appropriate to the patient's gender, age, and medical condition.

(i)1. At least once every three (3) months, the physician shall obtain and review a current KASPER report and appropriately use that information in the evaluation and treatment of the patient.

2. If the physician obtains or receives specific information that the patient is not taking the controlled substances as directed, is diverting controlled substances, or is engaged in any improper or illegal use of controlled substances, the physician shall immediately obtain and review a KASPER report and appropriately use the information in the evaluation and treatment of the patient.

3. If a KASPER report discloses that the patient is obtaining controlled substances from other practitioners without the physician's knowledge and approval, in a manner that raises suspicion of illegal diversion, the physician shall promptly notify the other practitioners of the relevant information from the KASPER review.

4. The physician shall obtain consultative assistance from a specialist when appropriate.

(j) When appropriate, the physician shall conduct random pill counts and appropriately use that information in the evaluation and treatment of the patient.

(k)1. During the course of long-term prescribing or dispensing of controlled substances, the physician shall utilize drug screens, appropriate to the controlled substances and the patient's condition, in a random and unannounced manner at appropriate times and, if appropriate in cases where the patient is noncompliant:

a. Do a controlled taper;

b. Stop prescribing or dispensing controlled substances immediately; or

c. Refer the patient to an addiction specialist, mental health professional, pain management specialist, or drug treatment program, depending upon the circumstances.

2. The physician shall discontinue controlled substance treatment and/or refer the patient to addiction management if one (1) or more of the following conditions exist:

a. There has been no improvement in function and response to the medical complaint and related symptoms, where improvement is medically expected;

b. Controlled substance therapy has produced significant adverse effects; or

c. The patient exhibits inappropriate drug-seeking behavior or diversion.

Section 6. Professional Standards for the Prescribing and Dispensing of Controlled Substances in an Emergency Department. (1) In addition to complying with the standards for the initial prescribing or dispensing of a controlled substance as detailed in Sections 4 and 7 of this administrative regulation, a physician prescribing or dispensing a controlled substance for a specific medical complaint and related symptoms to a patient in an Emergency Department is strongly discouraged and shall not routinely:

(a) Administer intravenous controlled substances for the relief of acute exacerbations of chronic pain, unless intravenous administration is the only medically appropriate means of delivery;

(b) Provide replacement prescriptions for controlled substances that were lost, destroyed, or stolen;

(c) Provide replacement doses of methadone, suboxone, or subutex for patients in a treatment program;

(d) Prescribe long-acting or controlled-release controlled substances, such as OxyContin, fentanyl patches, or methadone or replacement doses of such medications;

(e) Administer Meperidine to the patient; or

(f) Prescribe or dispense more than the minimum amount medically necessary to treat the patient's medical condition until the patient can be seen by their primary treating physician or another physician, with no refills. If the controlled substances prescribing exceeds seven (7) days in length, the

patient record must justify the amount of controlled substances prescribed.

Section 7. Professional Standards for the Prescribing and Dispensing of Controlled Substances for the Treatment of Other Conditions. (1) Before initially prescribing or dispensing controlled substances to patients for conditions other than pain, the physician shall:

(a) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and conduct a physical examination of the patient relevant to the medical complaint and related symptoms, for all medical complaints other than psychiatric conditions, and document the information in the patient's medical record. Psychiatrists or other designated mental health providers shall perform an evaluation appropriate to the presenting complaint and document relevant findings;

(b) Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the patient encounter, and appropriately utilize that information in the evaluation and treatment of the patient;

(c) After examining the benefits and risks of prescribing or dispensing controlled substances to the patient, including nontreatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substances in the amount specified;

(d) Avoid providing more controlled substances than necessary by prescribing or dispensing only the amount of controlled substances needed to treat the specific medical complaint;

(e) Explain to the patient that controlled substances used to treat an acute medical complaint are for time-limited use, and that the patient should discontinue the use of controlled substances when the condition requiring the controlled substance use has resolved; and

(f) Explain to the patient how to safely use and properly dispose of any unused controlled substances.

(2) If the physician continues to prescribe or dispense controlled substances to a patient for the same medical complaint and related symptoms, the physician shall fully conform to the standards of acceptable and prevailing practice for treatment of that medical complaint and for the use of the controlled substances.

(3) When a physician receives a request from an established patient to prescribe or dispense a limited amount of controlled substances to assist the patient in responding to the anxiety or depression resulting from a nonrecurring single episode or event, the physician shall:

(a) Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the patient request and appropriately utilize the information obtained in the evaluation and treatment of the patient;

(b) Make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substances in the amount specified, without requiring a personal encounter with the patient to obtain a more detailed history or to conduct a physical examination; and

(c) Prescribe or dispense the minimum amount of controlled substances to appropriately treat the situational anxiety or depression.

Section 8. Responsibility to Educate Patients Regarding the Dangers of Controlled Substance Use. (1) Physicians prescribing or dispensing controlled substances shall take appropriate steps to educate patients receiving controlled substances.

(2) Educational materials relating to these subjects may be found on the board's Web site, www.kbml.ky.gov, and are incorporated by reference into this administrative regulation.

Section 9. Violations. (1) Any violation of the professional standards established in this administrative regulation or in KRS 218A.172 shall constitute a violation of KRS 311.595(12) and (9), which may result in the imposition of disciplinary sanctions by the board, pursuant to KRS 311.595.

(2) Each violation of the professional standards established in this administrative regulation or in KRS 218A.172 shall be established by expert testimony by one (1) or more physicians retained by the board, following a review of the licensee's patient records and other available information including KASPER reports.[~~The professional standards established in this administrative regulation shall not apply to physicians prescribing or dispensing controlled substances:~~

~~(a) To a patient as part of the patient's hospice or end-of-life treatment;~~

~~(b) To a patient admitted to a licensed hospital, during and as part of a normal and expected part of the patient's course of admission at that hospital;~~

~~(c) To a patient for the treatment of pain associated with the treatment of cancer;~~

~~(d) To a patient who is a registered resident of a skilled long-term care facility; or~~

~~(e) As a direct part of their professional responsibilities in an emergency department and in accordance with the professional standards established in Section 5 of this administrative regulation.~~

~~(2) These exceptions do not apply to the standards established in KRS 218A.172.~~

~~Section 2. Professional Standards for Initial Prescribing or Dispensing of Controlled Substances. Prior to the initial prescribing or dispensing of any controlled substance for a specific medical complaint and related symptoms, each physician shall:~~

~~(a) Verify the identity of the patient by a current and valid government-issued photographic identification. If the physician does not have a copy of that identification in the patient's medical record, that physician shall ensure that the identification is copied and placed in the patient's medical record for future reference;~~

~~(b) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and conduct a physical examination of the patient relevant to the medical complaint and related symptoms, for all medical complaints other than psychiatric conditions, and document the information in the patient's medical record;~~

~~(c) Obtain and review a KASPER report for all available data on the patient, document relevant information in the patient's record and consider the available information to determine whether it is medically appropriate and safe to prescribe or dispense controlled substances. This requirement to obtain and review a KASPER report shall not apply to:~~

~~1. A physician prescribing or dispensing controlled substances to a patient, who is younger than eighteen (18) years of age at the time of prescribing or dispensing, for the treatment of Attention Deficit Hyperactive Disorder or Attention Deficit Disorder; or,~~

~~2. A physician prescribing or dispensing Schedule IV or V controlled substances other than those listed in this specific subsection. The physician shall obtain and review a KASPER report before initially prescribing or dispensing any of the following Schedule IV controlled substances:~~

~~(a) Ambien;~~
~~(b) Anorexics;~~
~~(c) Ativan;~~
~~(d) Klonopin;~~
~~(e) Librium;~~
~~(f) Nubain;~~
~~(g) Oxazepam;~~
~~(h) Phentermine;~~
~~(i) Soma;~~
~~(j) Stadol;~~
~~(k) Stadol NS;~~
~~(l) Tramadol;~~
~~(m) Valium;~~
~~(n) Versed; and~~
~~(o) Xanax; or~~

~~3. A physician who is unable to obtain and review a~~

~~KASPER report in a timely manner for reasons beyond the physician's control determines, upon the available facts, that it is medically appropriate to prescribe controlled substances in the absence of a KASPER report. For this exception, the physician shall document as soon as possible the circumstances that made it impossible to obtain and review a KASPER report before prescribing and the reason(s) the physician determined it was medically appropriate to prescribe controlled substances in the absence of KASPER information.~~

~~(d) After examining the benefits and risks of prescribing or dispensing controlled substances to the patient, including non-treatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substances in the amount specified. When the identified risks are significant or unique, the physician shall document in the patient's record the reasoning underlying the decision to prescribe or dispense controlled substances in spite of those risks;~~

~~(f) Avoid providing more controlled substances than necessary by prescribing or dispensing only the amount of controlled substances needed to treat the specific medical complaint, for a definite, pre-determined time period;~~

~~(g) Not prescribe or dispense long-acting or controlled-release opioids (e.g. OxyContin, fentanyl patches, and methadone) for acute pain;~~

~~(h) Explain to the patient that controlled substances used to treat an acute medical complaint are for time-limited use, and that the patient should discontinue the use of controlled substances when the condition requiring the controlled substance use has resolved;~~

~~(i) Explain to the patient how to safely and properly dispose of any unused controlled substances.~~

~~Section 3. Professional Standards to Commence the Long-Term Use of Any Controlled Substance. Before a physician continues to prescribe or dispense any controlled substance to a patient for a medical complaint or its associated symptoms for a total period of longer than three (3) months, the physician shall comply with the following mandatory professional standards:~~

~~Patient History. (1) The physician shall obtain the following information from the patient and record all relevant information in the patient's medical record in a legible manner, in sufficient detail to provide for meaningful diagnosis and treatment of the patient, or to allow for another practitioner to assume the medical care of the patient at any given time in a safe and medically appropriate manner:~~

~~(a) History of present illness, including each of its components;~~

~~(b) Past medical history, including past diagnostic efforts and treatments for the present medical complaint and other medical complaints;~~

~~(c) History of legal or illegal substance use by the patient and by first degree relatives of patient, including treatments for abuse or dependence;~~

~~(d) Past family history of illnesses and treatment relevant to the medical complaint and related symptoms; and,~~

~~(e) Psychosocial history.~~

~~(2) If a physician's practice utilizes a patient questionnaire as a primary source of obtaining such information, the physician shall ensure that:~~

~~(a) All questions are completely answered;~~

~~(b) Any material conflict in the answers is clarified with the patient;~~

~~(c) Complete information is obtained regarding any significant disclosure; and,~~

~~(d) All relevant information is incorporated into the patient's record and utilized in the development of the working diagnosis.~~

~~Physical Evaluations and Assessments. (1) The physician shall conduct a comprehensive physical examination of the patient for all medical conditions and related symptoms, other than psychiatric conditions, and properly document the findings of each evaluation or assessment in the patient's record, including but not limited to:~~

~~(a) Appropriate clinical examination addressing the medical complaint and related symptoms of a sufficient degree to support the medical indications for prescribing or dispensing controlled substances on a long-term basis;~~

~~(b) Measurable examinations that will establish baselines and will assist in establishing and periodically evaluating the functional goals of any treatment plan.~~

~~(4) If a specific or specialized evaluation is necessary for the formulation of a working diagnosis or treatment plan, the physician shall arrange for such evaluation as quickly as possible in order to be able to incorporate the findings into the working diagnosis and treatment plan. The physician shall document the relevant information obtained from the evaluation. If the physician determines that such an evaluation is necessary and the patient declines or fails to complete the evaluations in a timely manner for any reason, then the physician shall not continue the use of controlled substances unless the physician determines that continued use of controlled substances is safe and medically appropriate in the absence of such information. In that event, the physician shall document the reasons that the patient failed to complete the evaluation and the reasoning supporting the continued use of controlled substances in the absence of that relevant information;~~

~~Obtaining Medical Records from Other Practitioners. (1) If the physician determines that the patient has previously received medical treatment for the presenting medical complaint or related symptoms and that review of the prior treatment records is necessary to justify long-term prescribing of controlled substances, the physician shall request a copy of the other physician's records regarding the patient as quickly as possible, in order to incorporate such information into the working diagnosis and treatment plan;~~

~~(2) If the physician has requested a copy of the other physician's records and has not received them within a reasonable time, the physician will take appropriate steps to follow up and obtain such records. If the physician is unable, after reasonable attempts, to obtain the relevant records, the physician shall document the efforts made to obtain the records, the failure to receive the records, and the impact the inability to obtain such records has upon the physician's decision whether to continue or modify treatment, particularly the use of controlled substances, for that patient;~~

~~(3) Each physician, who receives a written request from another physician for a copy of records relating to that physician's prior treatment of a specific patient, shall promptly provide a copy of the patient's medical record to the requesting physician.~~

~~Establishing a Working Diagnosis. (1) Based upon consideration of all information available, the physician shall promptly formulate and document a working diagnosis of the source of the patient's medical complaint and related symptoms. It is not sufficient to simply describe or list the related symptoms;~~

~~(2) If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician shall consider the usefulness of additional information, such as specialized evaluations or assessments, referral to appropriate specialists, usefulness of further observation and evaluation, before attempting again to formulate a working diagnosis;~~

~~(3) If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician must determine whether long term use of controlled substances is indicated and appropriate. The physician may determine that a different or lower level of treatment is more appropriate until a working diagnosis can be established;~~

~~(4) The physician shall document the working diagnosis or all of the efforts taken in their unsuccessful attempt to formulate a working diagnosis and the reasons for their decision whether or not to utilize controlled substances on a long-term basis in the absence of a working diagnosis.~~

~~Formulating a Treatment Plan. (1) The physician shall formulate and document in the patient's medical record the proposed treatment plan, based upon the working diagnosis of the medical complaint and related symptoms, along with rele-~~

~~vant baseline information obtained in the evaluation of the patient;~~

~~(2) The treatment plan shall include specific and verifiable goals of treatment, with a schedule for periodic evaluations, which will permit the physician to assess whether a treatment is appropriately addressing the medical complaint and improving the patient's functional abilities. Statements such as "treat [medical] condition and related symptoms", "to make patient feel better," or "prescribe controlled substances" are not sufficient treatment goals. The treatment plan shall include an exit strategy for the termination of use of any treatment modality, including controlled substances, for appropriate reasons;~~

~~Patient Screening. (1) The physician shall utilize appropriate screening tools to screen each patient to determine if the patient:~~

~~(a) Is presently suffering from abuse or dependence of any substance, including alcohol;~~

~~(b) Is presently suffering from a psychiatric or psychological condition that requires treatment or that may impact the patient's treatment with controlled substances; or~~

~~(c) Presents a significant risk for illegal diversion of controlled substances, based upon information, gained by obtaining and reviewing a current KASPER report for all available data on that patient, that the patient has obtained controlled substances from multiple practitioners or has refilled prescriptions for controlled substances inappropriately.~~

~~(2) If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from substance abuse or dependence, the physician shall refer the patient to an appropriate treatment program or provider, or to an addiction specialist. If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from a qualifying psychiatric or psychological condition, the physician shall refer the patient for a psychological or psychiatric consultation, if appropriate. After making such referral, the physician shall consider the recommendations of the treatment program or specialist, before determining whether to continue with the long-term use of controlled substances with that patient, and, if so, appropriate treatment measures and monitoring. The physician shall document all relevant information about the screen, the referral, the recommendations, and any resulting prescribing decisions in the patient's medical record;~~

~~(3) If, after screening, the physician determines that there is a significant likelihood that the patient may illegally divert controlled substances, the physician must determine whether the use of a "prescribing agreement" would be sufficient to prevent diversion. This determination necessarily requires the physician to determine whether they have the professional resources to conduct necessary monitoring of the patient's controlled substance use. The terms of a "prescribing agreement" shall include, but not be limited to the patient's agreement to:~~

~~(a) Avoid improper use of controlled substances;~~

~~(b) Identify other licensed professionals providing medical care to the patient and authorize the physician to communicate with these other providers to coordinate care, particularly prescribing or dispensing of controlled substances;~~

~~(c) Only obtain controlled substances from the designated physician;~~

~~(d) Only fill controlled substances prescriptions at an approved pharmacy;~~

~~(e) Submit to urine drug screens or pill counts on request;~~

~~(f) Not seek early refills or call-in prescriptions of controlled substances;~~

~~(g) To produce an official police report for any effort to replace controlled substances that were lost or stolen;~~

~~(h) If necessary, submit to third-party administration of controlled substances prescribed if determined appropriate.~~

~~In order to avoid confusion and for the benefit of both parties, the physician shall consider including in the agreement the consequences for a violation of each provision. The "prescribing agreement" and informed consent document may be combined into one document.~~

~~(4) The physician shall obtain and document a baseline urine drug screen to determine whether the medications that are being prescribed are in the patient's system and to determine whether any un-prescribed or illegal controlled substances are in the patient's system.~~

~~(5) If, after screening, the physician determines that the controlled substances prescribed to the patient will be used or are likely to be used other than medicinally or other than for an accepted therapeutic purpose, the physician shall not prescribe controlled substances to that patient;~~

~~Obtaining Informed Consent. (1) The physician shall explain the risks and benefits of long term use of controlled substances and obtain informed consent from the patient for such prescribing. The decision to provide controlled substances to a patient on a long-term basis should be a deliberate and conscious decision by both the physician and the patient, after full consideration of the risks and benefits of such treatment;~~

~~(2) After explaining the risks and benefits of long-term use of controlled substances, the physician shall obtain the informed consent of the patient, in a writing that specifically sets out each risk and benefit discussed with the patient, and shall include and maintain that written informed consent in the patient's medical record. The informed consent document and any "prescribing agreement" may be combined into one document.~~

~~Initial Trial of Other Treatments; Titration. (1) Controlled substances shall only be utilized on a long-term basis after other appropriate non-controlled therapies have been attempted and have proven unsuccessful in appropriately treating the medical complaint and related symptoms. If controlled substances are utilized on a long-term basis, the physician shall prescribe or dispense controlled substances at the lowest level and for the shortest duration necessary to appropriately treat the medical complaint and related symptoms;~~

~~(2) The physician shall initially attempt, to the extent possible, or to establish and document a previous attempt by another physician, in increasing order, the following steps to treat the medical complaint and related symptoms:~~

~~(a) Use of physical therapy modalities alone or use of non-steroidal anti-inflammatory medication alone;~~

~~(b) Use of physical therapy modalities in conjunction with non-steroidal anti-inflammatory medication;~~

~~(c) Use of lowest level of controlled substances considered effective to treat the medical complaint and related symptoms, as part of an opioid trial; and,~~

~~(d) Titration of levels of controlled substances in measured steps until the level of controlled substances adequately treats the medical complaint and related symptoms.~~

~~Section 4. Professional Standards for Long-Term Prescribing or Dispensing of Controlled Substances. If a physician continues to prescribe or dispense controlled substances beyond three (3) months for a specific medical complaint and related symptoms, the physician shall comply with the following mandatory professional standards:~~

~~Patient Visits. (1) The physician shall personally see the patient at least once a month initially for evaluation and review of progress. The physician may see the patient less frequently, on a schedule determined by the physician's professional judgment after the physician has determined:~~

~~(a) The controlled substances prescribed or dispensed have been titrated to the level appropriate and necessary to treat the medical complaint and related symptoms;~~

~~(b) The controlled substances prescribed or dispensed are not causing harmful side effect; and,~~

~~(c) There is sufficient monitoring in place to ensure that the patient will not use the controlled substances in an improper or inappropriate manner or divert them for an improper or inappropriate use.~~

~~(2) At each patient visit, the physician shall obtain a current history from the patient, shall conduct a focused physical examination, and shall perform appropriate measurable exam-~~

~~inations as indicated in the treatment plan. The physician shall document all relevant information into the patient's medical record;~~

~~(3) At each patient visit, the physician shall evaluate the working diagnosis and treatment plan based upon the information gained during that encounter to determine whether there has been functional improvement or any change in baseline measures. If appropriate, the physician shall modify the diagnosis or treatment plan, or both, as appropriate. The reasons for any modification shall be documented in the patient's medical record.~~

~~Reviewing Functional Goals; Specialty Consultations. (1) The physician shall regularly review and determine whether the patient is exhibiting improved function, by meeting treatment goals jointly set, and is responding favorably to the medical treatment, including controlled substance therapy;~~

~~(2) For patients presenting a significant risk of diversion or improper use of controlled substances, the physician shall obtain the patient's consent to discuss the patient's treatment with independent sources, including family members, in order to verify:~~

~~(a) The patient's progress toward or achievement of treatment goals; and,~~

~~(b) The patient's use of controlled substances and any side effects of that use, through independent sources;~~

~~(3) If the medical complaint and related symptoms continue with no significant improvement in function despite treatment with controlled substances, the physician shall obtain consultative assistance to determine whether there are undiagnosed conditions that must be addressed to resolve the medical complaint, such as psychiatry, neurology, internal medicine, physical medicine and rehabilitation, orthopedics, addiction medicine, rheumatology, or oncology;~~

~~(4) For patients exhibiting symptoms suggestive of mood, anxiety and/or psychotic disorders, the physician shall obtain psychiatric or psychological consultations for intervention if such condition is affecting treatment;~~

~~Managing Breakthrough Pain. (1) If a patient reports that they are experiencing episodes of "breakthrough" pain, the physician shall:~~

~~(a) Attempt to identify the trigger or triggers for such episodes;~~

~~(b) Determine whether the breakthrough pain may be adequately treated through non-controlled treatment;~~

~~(c) If the episodes continue and the non-medication treatments do not adequately address the triggers, and after considering the risks and benefits, the physician determines to add an as-needed controlled substance to the regimen, the physician must take appropriate steps to minimize the improper or illegal use of the additional controlled substances by prescribing or dispensing only the amount of controlled substances needed to treat the specific medical complaint, for a definite, pre-determined time period. The physician shall also include appropriate monitoring of the additional controlled substance;~~

~~Preventive Medicine. (1) At least once a year, the physician shall perform or shall ensure that the patient's primary treating physician performs preventive health screening and physical examination appropriate to the patient's gender, age, and medical condition. The physician shall ensure that the patient is provided treatment appropriate to the findings and results of such screening. The physician shall document in the patient's medical record the annual preventive health screening performed or the results of the screening performed by the primary treating physician, the findings and results, and the treatment provided, if any;~~

~~Periodic KASPER Reviews and Monitoring Adherance. (1) At least once every three months, the physician shall obtain and review a current KASPER report to ensure that the patient is properly filling the prescriptions issued and that the patient is not obtaining controlled substances from other practitioners without the physician's knowledge and approval;~~

~~(2) If, at any time while the physician is prescribing or dispensing controlled substances to a patient, the physician obtains or receives specific information that the patient is not taking the controlled substances as directed, is diverting controlled substances, or is engaged in any improper or illegal use of controlled substances, the physician shall immediately obtain and review a KASPER report for the purposes specified in subsection (1), supra;~~

~~(3) If a KASPER report discloses that the patient is not filling the controlled substance prescriptions as directed or is obtaining controlled substances from other practitioners without the prescribing physician's knowledge and approval, the physician shall immediately address those issues with the patient. The physician shall not prescribe or dispense any more controlled substances unless the physician has addressed the issues with the patient and has determined that it is medically appropriate and safe to continue prescribing or dispensing controlled substances to the patient;~~

~~(4) If a KASPER report discloses that the patient is obtaining controlled substances from other practitioners without the physician's knowledge and approval, the physician shall promptly notify the appropriate law enforcement agency and the other practitioners of the relevant information from the KASPER review;~~

~~(5) The physician shall document in the patient's medical record each time a KASPER review is performed, information obtained; and, if applicable, the patient's account of any irregularities noted in the review; and, the physician's determination of what actually occurred;~~

~~(6) If the physician should determine that it is medically appropriate and safe to continue or resume prescribing or dispensing controlled substances to the patient after assessing their failure to fill prescriptions as directed or their obtaining controlled substances from other practitioners without the prescribing physician's knowledge and approval, the physician shall fully document in the patient's medical record the physician's rationale for resuming such prescribing or dispensing, to include an analysis of the risks and benefits of that decision, along with the increased monitoring or oversight measures being put into place to ensure controlled substances are not illegally diverted or used;~~

~~(7) The physician shall obtain consultative assistance from a specialist when appropriate.~~

~~Random Pill Counts. (1) When appropriate, the physician shall conduct unannounced random pill counts to determine whether the patient is taking the controlled substances as directed;~~

~~(2) If the physician discovers irregularity in the pill count, the physician shall immediately address those findings with the patient. The physician must use all available information, including a discussion with the patient, to determine whether the patient is illegally diverting controlled substances;~~

~~(3) If the physician determines that the patient has diverted controlled substances, the physician should immediately discontinue the prescribing or dispensing of controlled substances to that patient, if medically feasible. If it is not medically feasible to immediately discontinue the prescribing or dispensing of controlled substances, the physician shall immediately begin a tapering process to safely discontinue prescribing or dispensing controlled substances, after putting in place specific protections that will ensure that no further diversion occurs, such as requiring storage and administration of the controlled substances to the patient by a person designated by the physician, with additional random pill counts;~~

~~(4) The physician shall fully document the results of each pill count conducted, the physician's determination of the reasons for any shortage, and the physician's decisions regarding continued treatment, in the patient's medical record.~~

~~Urine Drug Screens. (1) During the course of long-term prescribing or dispensing of controlled substances, the physician shall utilize urine drug screens in a random manner at appropriate times to determine whether the patient is taking prescribed medications or taking illegal substances or medications not prescribed by the physician.~~

~~(2) If the patient tested negative for controlled substances prescribed or dispensed by the physician and confirmatory~~

~~testing substantiates a "red flag," the physician shall do one of the following:~~

~~(a) Do a controlled taper;~~

~~(b) Stop prescribing or dispensing controlled substances immediately; or,~~

~~(c) Refer the patient to an addiction specialist or drug treatment program, depending upon the circumstances.~~

~~(3) The physician shall discontinue controlled substance treatment and/or refer the patient to addiction management if one or more of the following conditions exist:~~

~~(a) There has been no improvement in function and response to the medical complaint and related symptoms;~~

~~(b) Controlled substance therapy has produced significant adverse effects; and/or~~

~~(c) The patient exhibits drug-seeking behavior or diversion.~~

~~Section 5. Professional Standards for Prescribing or Dispensing Controlled Substances in an Emergency Department Setting. The following professional standards apply to physicians who prescribe or dispense controlled substances in an emergency department setting:~~

~~(1) Before prescribing or dispensing a controlled substance in an emergency department setting, the physician shall:~~

~~(a) Obtain an appropriate medical history relevant to the medical complaint and conduct a physical examination of the patient relevant to the medical complaint and related symptoms and document the information in the patient's medical record;~~

~~(b) Obtain and review a KASPER report for all available data on the patient, document relevant information in the patient's record, and consider the available information to determine whether it is medically appropriate and safe to prescribe or dispense controlled substances. If the physician cannot obtain a KASPER report for review in sufficient time to make the determination whether to prescribe or dispense controlled substances, the physician shall not prescribe or dispense controlled substances unless demonstrated and documented in the patient's medical record that the medical necessity for and safety in prescribing or dispensing the controlled substance substantially outweigh the risk of unlawful use or diversion of the controlled substances, particularly considering the nature and severity of the patient's presenting complaint;~~

~~(c) After examining the benefits and risks of prescribing or dispensing controlled substances to the patient, including non-treatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substances in the amount specified, and document that decision in the patient's record and, if appropriate, the reasoning underlying that decision.~~

~~(2) The physician is strongly discouraged from and shall not routinely:~~

~~(a) Administer intravenous and/or intramuscular controlled substances for the relief of acute exacerbations of chronic pain;~~

~~(b) Provide replacement prescriptions for controlled substances that were lost, destroyed, or stolen;~~

~~(c) Provide replacement doses of methadone, suboxone, or subutex for patients in a treatment program;~~

~~(d) Prescribe long-acting or controlled-release controlled substances, such as OxyContin, fentanyl patches, or methadone or replacement doses of such medications;~~

~~(e) Administer Demerol (Meperadine) to the patient;~~

~~(f) Prescribe or dispense more than a three (3) day supply of controlled substances, with no refills.~~

~~(3) If the physician determines that exceptional circumstances exist which warrant prescribing or dispensing controlled substances in a manner that is strongly discouraged in Section 2(1), supra, the physician shall document in the patient's medical record the exceptional circumstances that warranted such prescribing or dispensing.~~

~~(4) The physician shall ensure that each patient receiving controlled substances by dispensing or prescription is given is informed, by handout or display signage, of the standards established in this regulation regarding the prescribing or dispensing of controlled substances.~~

~~(5) These standards shall not apply or be enforced during periods involving disaster, mass casualties, or extreme emergency.~~

~~Section 6. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes and Monitoring. (1) Each physician shall document all relevant information in a patient's medical record in a legible manner and in sufficient detail to provide for:~~

~~(a) Meaningful diagnosis and treatment of the patient;~~

~~(b) The safe and medically appropriate assumption of care by another physician at any given time; and,~~

~~(c) This board to determine whether the physician is conforming to professional standards for prescribing or dispensing controlled substances and other relevant professional standards. Such information includes, but is not limited to:~~

~~(a) Medical history and physical examinations;~~

~~(b) Diagnostic and laboratory test results and therapeutic outcomes;~~

~~(c) Evaluations and consultations;~~

~~(d) Records of past treatment outcomes including indicators of benefits, such as functional outcomes, and indicators of risk, such as adverse effects;~~

~~(e) Medications (including date prescribed, type, dosage, strength and quantity);~~

~~(f) Intensity levels of medical complaint and related symptoms;~~

~~(g) Subjective complaints of the patient;~~

~~(h) Objective findings related to subjective complaints, including impact on functioning and quality of life;~~

~~(i) Diagnostic impressions, and potential treatment options;~~

~~(j) Treatment objectives;~~

~~(k) Discussion of risks and benefits;~~

~~(l) Informed consent;~~

~~(m) Instructions and agreements; and~~

~~(n) Periodic review of treatments, including adverse effects, functional goals, and any other outcomes that reflect benefits or problems with the treatment.~~

~~(2) If a physician is unable to conform to professional standards for prescribing or dispensing controlled substances, to the professional standards established by KRS 218A.172, or to other professional standards, due to circumstances beyond their control, the physician shall appropriately document such circumstances and the physician's response to the inability to conform to the specific standards and the impact upon the continuing care of the patient.~~

~~Section 7. Responsibility to Educate Patients Regarding the Dangers of Controlled Substance Use. (1) It is the acceptable and prevailing medical practice within the Commonwealth of Kentucky for physicians prescribing or dispensing controlled substances to educate patients receiving controlled substances about the following subjects through verbal or written counseling:~~

~~(a) Proper use;~~

~~(b) Impact upon driving and work safety;~~

~~(c) Effect of use during pregnancy;~~

~~(d) Potential for overdose and appropriate response to overdose;~~

~~(e) Safe storage of controlled substances;~~

~~(f) Proper disposal;~~

~~(2) Educational materials relating to these subjects may be found on the board's Web site, www.kbml.ky.gov, and are incorporated by reference into this provision.~~

~~Section 8. Violations. (1) Any violation of the professional standards established in this regulation or in KRS 218A.172 shall constitute a violation of KRS 311.595(12) and (9), which~~

~~may result in the imposition of disciplinary sanctions pursuant to KRS 311.595;~~

~~(2) Each violation of the professional standards established in this regulation or in KRS 218A.172 shall be established by expert testimony by one or more physicians retained by the board, following a review of the licensee's patient records and other available information including KASPER reports.]~~

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 15, 2012 at 11 a.m.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation; Not Applicable.

(b) The necessity of the amendment to this administrative regulation; Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes; Not Applicable.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect every physician that prescribes and dispenses controlled substances in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to follow the professional standards for prescribing and dispensing controlled substances in the Commonwealth of Kentucky.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to the physician include having professional standards for prescribing and dispensing controlled substances to help curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a), 218A.205

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amended After Comments)

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

RELATES TO: KRS 218A.205(3)(a), 314.011(7), 314.042, 314.193(2)

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances

(CAPA-CS)" means the written document pursuant to KRS 314.042(9).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)" means the written document pursuant to KRS 314.042(8).

Section 2. The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in the following scope and standards of practice statements for each specialty area:

(1) Scope and Standards of Psychiatric-Mental Health Nursing Practice;

(2) Nursing: Scope and Standards of Practice;

(3) Scope and Standards for Nurse Anesthesia Practice;

(4) Standards for Office-based Anesthesia Practice;

(5) Standards for the Practice of Midwifery;

(6) The Women's Health Nurse Practitioner: Guidelines for Practice and Education;

(7) Pediatric Nursing: Scope and Standards of Practice;

(8) Standards of Practice for Nurse Practitioners;

(9) Scope of Practice for Nurse Practitioners;

(10) Scope and Standards of Practice for the Acute Care Nurse Practitioner;

(11) Neonatal Nursing: Scope and Standards of Practice;

(12) Scope and Standards for Acute and Critical Care Clinical Nurse Specialist Practice; and

(13) Statement on the Scope and Standards of Advanced Practice Nursing in Oncology.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, and diagnostic tests which are consistent with the scope and standard of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined in KRS 314.011(5).

Section 6. (1) A CAPA-NS shall include the name, address, phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the specialty area of practice of the advanced practice registered nurse. An advanced practice registered nurse shall, upon request, furnish to the board or its staff, a copy of the CAPA-NS.

(2) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(9)(a), the APRN shall file with the board the "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)".

(3) For purposes of the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS shall report all of his or her United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate numbers to the board when issued to the APRN by mailing a copy of the registration certificate to the board within thirty (30) days of issuance.

(b) Any change in the status of the DEA Controlled Substance Registration Certificate number shall be reported **in writing** to the board within thirty (30) days.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1).

Section 8. The board may make an unannounced monitoring visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by 201 KAR Chapter 20**, and patient and prescribing records shall be made available for immediate inspection**.

Section 9. Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to an APRN with a CAPA-CS when prescribing a controlled substance**[~~listed in subsection (7) of this section~~]**.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus.

(2) **This section shall not apply to:**

(a) Administering or prescribing a controlled substance or anesthesia immediately prior to, during, or for up to seven (7) days following surgery or an invasive procedure;

(b) Administering a controlled substance necessary to treat a patient in an emergency situation:

1. At the scene of an emergency;

2. In a licensed ground or air ambulance; or

3. In an emergency department of a hospital, except as provided in subsection (11) of this section.

(c) Prescribing a controlled substance for a hospice patient or any end of life care;

(d) A patient admitted to a licensed hospital as an inpatient, outpatient, or observation patient, during and as part of the patient's normal and expected course of care at that hospital;

(e) A patient who is a registered resident of a long term care facility as defined in KRS 216.510;

(f) Prescribing during the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

(g) Prescribing a single dose of a controlled substance to relieve anxiety, pain, or discomfort related to a diagnostic test or procedure;

(h) Prescribing a limited amount of a controlled substance for a short period of time for an established patient to assist the patient in responding to the anxiety of a nonrecurring event;

(i) Treatment associated with cancer;

(j) Administering or prescribing controlled substances to prisoners in a state or county correctional facility;

(k) Prescribing of a Schedule V controlled substance; and

(l) Schedule II controlled substances and Schedule III controlled substances with hydrocodone as established in KRS 218A.172.

(3) The APRN shall, prior to initially prescribing a controlled substance for a medical complaint for a patient:

(a) Obtain the patient's medical history and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for all data on the patient for the twelve (12) month period immediately preceding the patient encounter;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance should be discontinued when the condition requiring its use has resolved; and

3. Document that the discussion occurred and that the patient consented to the treatment.

(4) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(5) For subsequent or continuing long-term prescriptions

of a controlled substance for the same medical complaint, the APRN shall:

(a) Obtain necessary updates to the patient's medical history and document the information in the patient's medical record;

(b) Modify the treatment plan as necessary; and

(c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.

(6) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for all available data on the patient before issuing a new prescription or a refill for a controlled substance.

(7) These standards may be accomplished by different licensed practitioners in a single group practice if:

(a) Each practitioner involved has lawful access to the patient's medical record;

(b) Each practitioner performing an action to meet these standards shall be acting within the legal scope of their practice; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(8) If prescribing a controlled substance for the treatment of chronic, noncancer pain, the APRN, in addition to the requirements of this section, shall, if appropriate, obtain a baseline drug screen and further random drug screens as deemed necessary by the APRN.

(9) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section.

(10) If prescribing a controlled substance for patients younger than sixteen (16) years of age, the APRN shall obtain and review an initial KASPER report. If prescribing a controlled substance for an individual sixteen (16) years of age or older, the requirements of this section shall apply.

(11) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record.

(b) Query KASPER for data covering at least the previous twelve (12) months on the patient;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence and document that the discussion occurred and that the patient consented to the treatment.

(12) If an APRN is unable to conform to the standards set in this section or to those set in KRS 218A.172 due to circumstances beyond their control, or if the APRN makes a professional judgment that it is not appropriate to comply with a specific standard based upon the facts applicable to a specific patient, the APRN shall document the circumstances and the APRN's response to the inability to conform to the specific standard or the rationale for not complying with the standard and the impact upon the continuing care of the patient.[~~The APRN shall, prior to initially prescribing a controlled substance listed in subsection (7) of this section, for a patient:~~

~~(a) Obtain the patient's medical history and conduct an examination of the patient and document the information in the patient's medical record;~~

~~(b) Query KASPER for all available data on the patient;~~

~~(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;~~

~~(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and~~

~~(e) Obtain written consent for the treatment.~~

~~(3) The treatment plan shall include an exit strategy, including potential discontinuation of the use of controlled substances.~~

~~(4) For subsequent prescriptions of a controlled substance listed in subsection (7) of this section, the APRN shall:~~

~~(a) Obtain necessary updates to the patient's medical history and document the information in the patient's medical record;~~

~~(b) Modify the treatment plan as necessary; and~~

~~(c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.~~

~~(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for all available data on the patient before issuing a new prescription or a refill for a controlled substance.~~

~~(6) This section shall not apply to:~~

~~(a) Administering a controlled substance or anesthesia immediately prior to or during surgery;~~

~~(b) Administering a controlled substance necessary to treat a patient in an emergency situation:~~

~~1. At the scene of an emergency; or~~

~~2. In a licensed ground or air ambulance;~~

~~(c) Prescribing a controlled substance for a hospice patient when functioning within the scope of a hospice program or hospice inpatient unit licensed under KRS Chapter 216B;~~

~~(d) A patient admitted to a licensed hospital, during and as part of the patient's normal and expected course of admission at that hospital;~~

~~(e) A patient who is a registered resident of a skilled long term care facility; or~~

~~(f) Prescribing a controlled substance for a patient receiving palliative care.~~

~~(7) This section shall only apply to the following controlled substances:~~

~~(a) Ambien;~~

~~(b) Anorexics;~~

~~(c) Ativan;~~

~~(d) Klonopin;~~

~~(e) Librium;~~

~~(f) Nubain;~~

~~(g) Oxazepam;~~

~~(h) Phentermine;~~

~~(i) Soma;~~

~~(j) Stadol;~~

~~(k) Stadol NS;~~

~~(l) Tramadol;~~

~~(m) Valium;~~

~~(n) Versed; and,~~

~~(o) Xanax~~.

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

(a) "Scope and Standards of Psychiatric-Mental Health Nursing Practice", 2007 Edition, American Nurses' Association;

(b) "Nursing: Scope and Standards of Practice", 2010 Edition, American Nurses' Association;

(c) "Standards for Office-based Anesthesia Practice", 2010 Edition, American Association of Nurse Anesthetists;

(d) "Scope and Standards for Nurse Anesthesia Practice", 2010 Edition, American Association of Nurse Anesthetists;

(e) "Standards for the Practice of Midwifery", **2011**[~~2009~~] Edition, American College of Nurse-midwives;

(f) "The Women's Health Nurse Practitioner: Guidelines for

Practice and Education", 2008 Edition, Association of Women's Health, Obstetric and Neonatal Nurses and National Association of Nurse Practitioners in Women's Health;

(g) "Pediatric Nursing: Scope and Standards of Practice", 2008 Edition, National Association of Pediatric Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2010 Edition, American Academy of Nurse Practitioners;

(i) "Scope of Practice for Nurse Practitioners", 2010 Edition, American Academy of Nurse Practitioners;

(j) "Scope and Standards of Practice for the Acute Care Nurse Practitioner", 2006 Edition. American Association of Critical Care Nurses;

(k) "Neonatal Nursing: Scope and Standards of Practice", 2004 Edition, American Nurses Association/National Association of Neonatal Nurses;

(l) "Scope and Standards for Acute and Critical Care Clinical Nurse Specialist Practice", 2010 Edition, American Association of Critical-Care Nurses;

(m) "Statement on the Scope and Standards of Advanced Practice Nursing in Oncology", 2003 Edition, Oncology Nursing Society; and

(n) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)", 6/2010, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL KOMARA, President

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: November 15, 2012 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets out the scope and standards of practice for Advanced Practice Registered Nurses (APRN).

(b) The necessity of this administrative regulation: It is required by statute

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out standards.

(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: House Bill 1 (2012 Special Session) requires the board to promulgate administrative regulations on certain matters. The amendment to this administrative regulation involves the requirement of setting prescribing standards for controlled substances. In addition, the amendment requires APRNs to report their DEA number to the board. This will assist the board in obtaining KASPER reports when needed.

(b) The necessity of the amendment to this administrative regulation: It is required by House Bill 1.

(c) How the amendment conforms to the content of the authorizing statutes: By setting prescribing standards.

(d) How the amendment will assist in the effective administration of the statutes: It will be in conformity with the statute. Also, the board will have necessary information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN controlled substance prescribers, presently there are approximately 1500.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to report DEA numbers to the board. In addition, they will have to follow controlled substance prescribing standards.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the statute and regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all 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? Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not require additional cost of administer.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 10:031. Surface water standards.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-

100-224.71-145, 224.73-100-224.73-120,[~~EO 2008-507, 2008-531~~]

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution.[~~EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.~~] This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1387, 40 C.F.R. 131, and KRS Chapter 224.

Section 1. Nutrients Criterion.[~~Nutrient.~~] Nutrients shall not be elevated in a surface water to a level that results in **a** eutrophication **problem**.[~~Limits. In lakes and reservoirs and their tributaries, and other surface waters where eutrophication problems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges shall be limited in accordance with:~~

~~(1) The scope of the problem;~~

~~(2) The geography of the affected area; and~~

~~(3) Relative contributions from existing and proposed sources.~~]

Section 2. Minimum Criteria Applicable to All Surface Waters. (1) The following minimum water quality criteria shall be applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 10:029, Section 4. Surface waters shall not be aesthetically or otherwise degraded by substances that:

(a) Settle to form objectionable deposits;

(b) Float as debris, scum, oil, or other matter to form a nuisance;

(c) Produce objectionable color, odor, taste, or turbidity;

(d) Injure, are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish, and other aquatic life;

(e) Produce undesirable aquatic life or result in the dominance of nuisance species;

(f)1. Cause fish flesh tainting.

2. The concentration of phenol shall not exceed 300 g/L as an instream value.

(2) The water quality criteria for the protection of human health related to fish consumption in Table 1 of Section 6 of this administrative regulation are applicable to all surface water at the edge of the assigned mixing zones except for those points where water is withdrawn for domestic water supply use.

(a) The criteria are established to protect human health from the consumption of fish tissue, and shall not be exceeded.

(b) For those substances associated with a cancer risk, an acceptable risk level of not more than one (1) additional cancer case in a population of 1,000,000 people, or 1×10^{-6} shall be utilized to establish the allowable concentration.

Section 3. Use Designations and Associated Criteria. (1) Surface waters may be designated as having one (1) or more legitimate uses and associated criteria protective of those uses. Those uses are listed in 401 KAR 10:026. Nothing in this administrative regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Sections 2, 4, 6, and 7 of this administrative regulation represent minimum conditions necessary to:

(a) Protect surface waters for the indicated use; and

(b) Protect human health from fish consumption.

(2) On occasion, surface water quality may be outside of the limits established to protect designated uses because of natural conditions. If this occurs during periods when stream flows are below the flow that is used by the cabinet to establish effluent limitations for wastewater treatment facilities, a discharger shall not be considered a contributor to instream violations of water quality standards, if treatment results in compliance with permit requirements.

(3) Stream flows for water quality-based permits. The following stream flows shall be utilized if deriving KPDES permit limitations to protect surface waters for the listed uses and purposes:

(a) Aquatic life protection shall be $7Q_{10}$;

(b) Water-based recreation protection shall be $7Q_{10}$;

(c) Domestic water supply protection shall be determined at points of withdrawal as:

1. The harmonic mean for cancer-linked substances; and

2. $7Q_{10}$ for noncancer-linked substances;

(d) Human health protection from fish consumption and for changes in radionuclides shall be the harmonic mean; and

(e) Protection of aesthetics shall be $7Q_{10}$.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreous growth, agricultural, and industrial uses:

(a) Natural alkalinity as $CaCO_3$ shall not be reduced by more than twenty-five (25) percent.

1. If natural alkalinity is below twenty (20) mg/L $CaCO_3$, there shall not be a reduction below the natural level.

2. Alkalinity shall not be reduced or increased to a degree that may adversely affect the aquatic community;

(b) pH shall not be less than six and zero-tenths (6.0) nor more than nine and zero-tenths (9.0) and shall not fluctuate more than one and zero-tenths (1.0) pH unit over a period of twenty-four (24) hours;

(c) Flow shall not be altered to a degree that will adversely affect the aquatic community;

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet may determine allowable surface water temperatures on a site-specific basis utilizing available data that shall be based on the effects of temperature on the aquatic biota that utilize specific surface waters of the commonwealth and that may be affected by person-induced temperature changes.

a. Effects on downstream uses shall also be considered in determining site-specific temperatures.

b. Values in the following table are guidelines for surface water temperature.

Month/Date	Period Average		Instantaneous Maximum	
	(°F)	(°C)	(°F)	(°C)
January 1-31	45	7	50	10
February 1-29	45	7	50	10
March 1-15	51	11	56	13
March 16-31	54	12	59	15
April 1-15	58	14	64	18
April 16-30	64	18	69	21
May 1-15	68	20	73	23
May 16-31	75	24	80	27
June 1-15	80	27	85	29
June 16-30	83	28	87	31
July 1-31	84	29	89	32
August 1-31	84	29	89	32
September 1-15	84	29	87	31
September 16-30	82	28	86	30
October 1-15	77	25	82	28
October 16-31	72	22	77	25
November 1-30	67	19	72	22
December 1-31	52	11	57	14

3. A successful demonstration concerning thermal discharge limits carried out pursuant to[~~under~~] Section 316(a) of the Clean Water Act, 33 U.S.C. 1326, shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made;

(e) Dissolved oxygen.

1. a. Dissolved oxygen shall be maintained at a minimum concentration of five and zero-tenths (5.0) mg/L as a twenty-four (24) hour average in water with WAH use;

b. The instantaneous minimum shall not be less than four and zero-tenths (4.0) mg/L in water with WAH use.

2. The dissolved oxygen concentration shall be measured at mid-depth in waters having a total depth of ten (10) feet or less and at representative depths in other waters;

(f) Total dissolved solids or specific conductance. Total dissolved solids or specific conductance shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(g) Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(h) Settleable solids. The addition of settleable solids that may alter the stream bottom so as to adversely affect productive aquatic communities shall be prohibited;

(i) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/L at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/L, pH and temperature, by means of the following equation:

$Y = 1.2\ (\text{Total ammonia-N})/(1 + 10^{pKa-pH})$

$pk_a = 0.0902 + (2730/(273.2 + T_c))$

Where:

T_c = temperature, degrees Celsius.

Y = un-ionized ammonia (mg/L);

(j) Toxics.

1. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are noncumulative or nonpersistent with a half-life of less than ninety-six (96) hours, shall not exceed:

a. One-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC_{50}) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the twenty-five (25) percent inhibition concentration, or LC_{25}.

2. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are bioaccumulative or persistent, including pesticides, if not specified elsewhere in this section, shall not exceed:

a. 0.01 of the ninety-six (96) hour median lethal concentration (LC_{50}) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the IC_{25}.

3. In the absence of acute criteria for pollutants listed in Table 1 of Section 6 of this administrative regulation, for other substances known to be toxic but not listed in this administrative regulation, or for whole effluents that are acutely toxic, the allowable instream concentration shall not exceed the LC_1 or one-third (1/3) LC_{50} concentration derived from toxicity tests on representative indigenous or indicator aquatic organisms or exceed three-tenths (0.3) acute toxicity units.

4. If specific application factors have been determined for a toxic substance or whole effluent such as an acute to chronic ratio or water effect ratio, they may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon demonstration by the applicant that the application factors are scientifically defensible.

5. Allowable instream concentrations for specific pollutants for the protection of warm water aquatic habitat are listed in Table 1 of Section 6 of this administrative regulation. These concentrations are based on protecting aquatic life from acute and chronic toxicity and shall not be exceeded; and

(k) Total residual chlorine. Instream concentrations for total residual chlorine shall not exceed an acute criteria value of nineteen (19) □g/L or a chronic criteria value of eleven (11) □g/L.

(2) Cold water aquatic habitat. The following parameters and criteria are for the protection of productive cold water aquatic communities and streams that support trout populations, whether self-sustaining or reproducing, on a year-round basis. The criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six and zero-tenths (6.0) mg/L as a twenty-four (24) hour average and five and zero-tenths (5.0) mg/L as an instantaneous minimum shall be maintained.

2. In lakes and reservoirs that support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality; and

(b) Temperature. Water temperature shall not be increased through human activities above the natural seasonal temperatures.

Section 5. Domestic Water Supply Use. Maximum allowable instream concentrations for specific substances, to be applicable at the point of withdrawal, as established in 401 KAR 10:026, Section 5(2)(b), Table B, for use for domestic water supply from surface water sources are specified in Table 1 of Section 6 of this administrative regulation and shall not be exceeded.

Section 6. Pollutants. (1) Allowable instream concentrations of pollutants are listed in Table 1 of this section.

Table 1

Pollutant	CAS[1] Number	Water Quality Criteria □g/L[2]			
		Human Health:		Warm Water Aquatic Habitat[3]:	
		DWS[4]	Fish[5]	Acute[6]	Chronic[7]
Acenaphthene	83329	670	990	-	-
Acrolein	107028	190	6 [~~290~~]	3 [-]	3 [-]
Acrylonitrile	107131	0.051	0.25	-	-
Aldrin	309002	0.000049	0.000050	3.0	-
alpha-BHC	319846	0.0026	0.0049	-	-
alpha-Endosulfan	959988	62	89	0.22	0.056
Anthracene	120127	8,300	40,000	-	-
Antimony	7440360	5.6	640	-	-
Arsenic	7440382	10.0	-	340	150
Asbestos	1332214	7 million fibers/L	-	-	-
Barium	7440393	1,000	-	-	-
Benzene	71432	2.2	51	-	-
Benzidine	92875	0.000086	0.00020	-	-
Benzo(a)anthracene	56553	0.0038	0.018	-	-
Benzo(a)pyrene	50328	0.0038	0.018	-	-
Benzo(b)fluoranthene	205992	0.0038	0.018	-	-

Table 1					
Pollutant	CAS[1] Number	Water Quality Criteria g/L[2]			
		Human Health:		Warm Water Aquatic Habitat[3]:	
		DWS[4]	Fish[5]	Acute[6]	Chronic[7]
Benzo(k)fluoranthene	207089	0.0038	0.018	-	-
Beryllium	7440417	4	-	-	-
Beta-BHC	319857	0.0091	0.017	-	-
Beta-Endosulfan	33213659	62	89	0.22	0.056
bis(chloromethyl)ether	542881	0.00010	0.00029	-	-
bis(2-chloroethyl)ether	111444	0.030	0.53	-	-
bis(2-chloroisopropyl)ether	108601	1,400	65,000	-	-
bis(2-ethylhexyl)phthalate	117817	1.2	2.2	-	-
Bromoform	75252	4.3	140	-	-
Butylbenzyl phthalate	85687	1,500	1,900	-	-
Cadmium	7440439	5	-	e(1.0166 (ln Hard*)-3.924)	e(0.7409 (ln Hard*)-4.719)
Carbon tetrachloride	56235	0.23	1.6	-	-
Chlordane	57749	0.00080	0.00081	2.4	0.0043
Chloride	16887006	250,000	-	1,200,000	600,000
Chlorobenzene	108907	130	1600	-	-
Chlorodibromomethane	124481	0.40	13	-	-
Chloroform	67663	5.7	470	-	-
Chloropyrifos	2921882	-	-	0.083	0.041
Chromium	N/A	100	-	-	-
Chromium (III)	16065831	-	-	e(0.8190 (ln Hard*)+ 3.7256)	e(0.8190 (ln Hard*)+ 0.6848)
Chromium (VI)	18540299	-	-	16	11
Chrysene	218019	0.0038	0.018	-	-
Color	N/A	75 Platinum Co-balt Units	-	-	-
Copper	7440508	1,300	-	e(0.9422 (ln Hard*)-1.700)	e(0.8545 (ln Hard*)-1.702)
Cyanide, Free	57125	140	140	22	5.2
Demeton	8065483	-	-	-	0.1
Diazinon	333415			0.17	0.17
Dibenzo(a,h)anthracene	53703	0.0038	0.018	-	-
Dichlorobromomethane	75274	0.55	17	-	-
Dieldrin	60571	0.000052	0.000054	0.24	0.056
Diethyl phthalate	84662	17,000	44,000	-	-
Dimethyl phthalate	131113	270,000	1,100,000	-	-
Di-n-butyl phthalate	84742	2,000	4,500	-	-
Dinitrophenols	25550587	69	5300	-	-
Endosulfan sulfate	1031078	62	89	-	-
Endrin	72208	0.059	0.060	0.086	0.036
Endrin aldehyde	7421934	0.29	0.30	-	-
Ethylbenzene	100414	530	2100	-	-
Fluoranthene	206440	130	140	-	-
Fluorene	86737	1,100	5,300	-	-
Fluoride	N/A	4,000	-	-	-
Guthion	86500	-	-	-	0.01
Heptachlor	76448	0.000079	0.000079	0.52	0.0038
Heptachlor epoxide	1024573	0.000039	0.000039	0.52	0.0038
Hexachlorobenzene	118741	0.00028	0.00029	-	-
Hexachlorobutadiene	87683	0.44	18	-	-
Hexachlorocyclo-hexane-Technical	319868	0.0123	0.0414	-	-
Hexachlorocyclopentadiene	77474	40	1100	-	-
Hexachloroethane	67721	1.4	3.3	-	-
Ideno(1,2,3-cd)pyrene	193395	0.0038	0.018	-	-
Iron[8]	7439896	300	-	4,000	1,000
Isophorone	78591	35.0	960	-	-
Lead	7439921	15	-	e(1.273 (ln Hard*)-1.460)	e(1.273 (ln Hard*)-4.705)
Lindane (gamma-BHC)	58899	0.98	1.8	0.95	
Malathion	121755	-	-	-	0.1
Mercury	7439976	2.0	0.051	1.4	0.77

Table 1					
Pollutant	CAS[1] Number	Water Quality Criteria □g/L[2]			
		Human Health:		Warm Water Aquatic Habitat[3]:	
		DWS[4]	Fish[5]	Acute[6]	Chronic[7]
Methylmercury	22967926		0.3 mg/Kg		
Methoxychlor	72435	100	-	-	0.03
Methylbromide	74839	47	1,500	-	-
Methylene Chloride	75092	4.6	590	-	-
Mirex	2385855	-	-	-	0.001
Nickel	7440020	610	4,600	e(0.8460 (ln Hard*)+ 2.255)	e(0.8460 (ln Hard*)+ 0.0584)
Nitrate (as N)	14797558	10,000	-	-	-
Nitrobenzene	98953	17	690	-	-
Nitrosamines, Other	N/A	0.0008	1.24	-	-
N-Nitrosodibutylamine	924163	0.0063	0.22	-	-
N-Nitrosodiethylamine	55185	0.0008	1.24	-	-
N-Nitrosodimethylamine	62759	0.00069	3.0	-	-
N-Nitrosodi-n-Propylamine	621647	0.0050	0.51	-	-
N-Nitrosodiphenylamine	86306	3.3	6.0	-	-
N-Nitrosopyrrolidine	930552	0.016	34	-	-
Nonylphenol	1044051			28	6.6
Parathion	56382	-	-	0.065	0.013
Pentachlorobenzene	608935	1.4	1.5	-	-
Pentachlorophenol	87865	0.27	3.0	e(1.005 (pH)-4.869)	e(1.005 (pH)-5.134)
Phenol	108952	21,000	860,000 [~~1,700,000~~]	-	-
Polychlorinated Biphenyls (PCBs)	N/A	0.000064	0.000064	-	**0.014 [~~0.0014~~]**
Pyrene	129000	830	4,000	-	-
Selenium	7782492	170	4,200	[~~20~~]	5.0
Silver	7440224	-	-	e(1.72 (ln Hard*)-6 .59)	-
Sulfate	N/A	250,000	-	-	-
Hydrogen Sulfide, Undissociated	7783064	-	-	-	2.0
Tetrachloroethylene	127184	0.69	3.3	-	-
Thallium	7440280	0.24	0.47	-	-
Toluene	108883	1300	15,000	-	-
Total Dissolved Solids	N/A	250,000	-	-	-
Toxaphene	8001352	0.00028	0.00028	0.73	0.0002
Tributyltin (TBT)				0.46	0.072
Trichloroethylene	79016	2.5	30	-	-
Vinyl Chloride	75014	0.025	2.4	-	-
Zinc	7440666	7,400	26,000	e(0.8473 (ln Hard*)+ 0.884)	e(0.8473 (ln Hard*)+ 0.884)
1,1-dichloroethylene	75354	330	7100	-	-
1,1,1-trichloroethane	71556	200	-	-	-
1,1,2-trichloroethane	79005	0.59	16	-	-
1,1,2,2-tetrachloroethane	79345	0.17	4.0	-	-
1,2-dichlorobenzene	95501	420	1300	-	-
1,2-dichloroethane	107062	0.38	37	-	-
1,2-dichloropropane	78875	0.50	15	-	-
1,2-diphenylhydrazine	122667	0.036	0.20	-	-
1,2-trans-dichloroethylene	156605	140	10,000	-	-
1,2,4-trichlorobenzene	120821	35	70	-	-
1,2,4,5-tetrachlorobenzene	95943	0.97	1.1	-	-
1,3-dichlorobenzene	541731	320	960	-	-
1,3-dichloropropene	542756	0.34	21	-	-
1,4-dichlorobenzene	106467	63	190	-	-
2-chloronaphthalene	91587	1,000	1,600	-	-
2-chlorophenol	95578	81	150	-	-
2-methyl-4,6-dinitrophenol	534521	13	280	-	-
2,3,7,8-TCDD (Dioxin)	1746016	5.0 E - 9	5.1 E - 9	-	-
2,4-D	94757	100	-	-	-
2,4-dichlorophenol	120832	77	290	-	-
2,4-dimethylphenol	105679	380	850	-	-
2,4-dinitrophenol	51285	69	5,300	-	-
2,4-dinitrotoluene	121142	0.11	3.4	-	-

Table 1					
Pollutant	CAS[1] Number	Water Quality Criteria □g/L[2]			
		Human Health:		Warm Water Aquatic Habitat[3]:	
		DWS[4]	Fish[5]	Acute[6]	Chronic[7]
2,4,5-TP (Silvex)	93721	10	-	-	-
2,4,5-trichlorophenol	95954	1,800	3,600	-	-
2,4,6-trichlorophenol	88062	1.4	2.4	-	-
3,3'-dichlorobenzidine	91941	0.021	0.028	-	-
4,4'-DDD	72548	0.00031	0.00031	-	-
4,4'-DDE	72559	0.00022	0.00022	-	-
4,4'-DDT	50293	0.00022	0.00022	1.1	0.001

[1]CAS = Chemical Abstracts Service.
[2]Water quality criteria in □g/L unless reported in different units.
[3]Metal concentrations shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life.
[4]DWS = Domestic Water Supply Source.
[5]Fish = Fish Consumption.
[6]Acute criteria = protective of aquatic life based on one (1) hour exposure that does not exceed the criterion for a given pollutant.
[7]Chronic = protective of aquatic life based on ninety-six (96) hour exposure that does not exceed the criterion of a given pollutant more than once every three (3) years on the average.
[8]The chronic criterion for iron shall not exceed three and five tenths (3.5) mg/L (thirty-five hundred □g/L) if aquatic life has not been shown to be adversely affected.
*Hard = Hardness as mg/L $CaCO_3$.

(2) The following additional criteria for radionuclides shall apply for Domestic Water Supply use:

(a) The gross total alpha particle activity, including radium-226 but excluding radon and uranium, shall not exceed fifteen (15) pCi/L;

(b) Combined radium-226 and radium-228 shall not exceed five (5) pCi/L. Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/L;

(c) The concentration of total gross beta particle activity shall not exceed fifty (50) pCi/L;

(d) The concentration of tritium shall not exceed 20,000 pCi/l;

(e) The concentration of total Strontium-90 shall not exceed eight (8) pCi/L; or

(f) The concentration of uranium shall not exceed thirty (30) □g/l.

Section 7. Recreational Waters. (1) Primary contact recreation water. The following criteria shall apply to waters designated as primary contact recreation use during the primary contact recreation season of May 1 through October 31:

(a) Fecal coliform content or Escherichia coli content shall not exceed 200 colonies per 100 ml or 130 colonies per 100 ml respectively as a geometric mean based on not less than five (5) samples taken during a thirty (30) day period. Content also shall not exceed 400 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period for fecal coliform or 240 colonies per 100 ml for Escherichia coli. Fecal coliform criteria listed in subsection (2)(a) of this section shall apply during the remainder of the year; and

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

(2) Secondary contact recreation water. The following criteria shall apply to waters designated for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1,000 colonies per 100 ml as a thirty (30) day geometric mean based on not less than five (5) samples; nor exceed 2,000 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period; and

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

Section 8. Outstanding State Resource Waters. This designation category includes certain unique waters of the commonwealth. (1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated pursuant to[~~under~~] the Kentucky Wild Rivers Act, KRS 146.200-146.360;

2. Waters designated pursuant to[~~under~~] the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287;

3.[~~Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas in accordance with 400 KAR 2:080 and concurred upon by the cabinet; and~~

~~4.~~] Waters that support federally recognized endangered or threatened species pursuant to[~~under~~] the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531-1544.

(b) Permissible consideration. Other surface waters shall be considered for inclusion in this category if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological, natural, or historical area recognized by state or federal designation; or

2. The surface water is a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics, or fulfill two (2) of the following criteria:

a. Support a diverse or unique native aquatic flora or fauna;

b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat; or

c. Provide a unique aquatic environment within a physiographic region.

(2) Outstanding state resource waters protection. The designation of certain waters as outstanding state resource waters shall fairly and fully reflect those aspects of the waters for which the designation is proposed. The cabinet shall determine water quality criteria for these waters as follows:

(a) At a minimum, the criteria of Section 2 and Table 1 of Section 6 of this administrative regulation and the appropriate criteria associated with the stream use designation assignments in 401 KAR 10:026, shall be applicable to these waters.

(b) Outstanding state resource waters that are listed as Exceptional Waters in 401 KAR 10:030, Section 1(2) shall have dissolved oxygen maintained at a minimum concentration of six and zero-tenths (6.0) mg/L as a twenty-four (24) hour average and an instantaneous minimum concentration of not less than five and zero-tenths (5.0) mg/L.

(c)1. If the values identified for an outstanding state resource

water are dependent upon or related to instream water quality, the cabinet shall review existing water quality criteria and determine if additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination.

2. Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding state resource waters that support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species that the water supports.

(d) Adoption of more protective criteria in accordance with this section shall be listed with the respective stream segment in 401 KAR 10:026.

(3) Determination of designation.

(a) A person may present a proposal to designate certain waters pursuant to[~~under~~] this section. Documentation requirements in support of an outstanding state resource water proposal shall contain those elements outlined in 401 KAR 10:026, Section 3(3)(a) through (h).

(b)1. The cabinet shall review the proposal and supporting documentation to determine if[~~whether~~] the proposed waters qualify as outstanding state resource waters within the criteria established by this administrative regulation.

2. The cabinet shall document the determination to deny or to propose redesignation, and a copy of the decision shall be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a redesignation, if appropriate, shall be made pursuant to 401 KAR 10:026.

Section 9. Water Quality Criteria for the Main Stem of the Ohio River. (1) The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded.

(2) These waters shall be subject to all applicable provisions of 401 KAR 10:001, 10:026, 10:029, 10:030, and this administrative regulation, except for those criteria in paragraphs (a) and (b) of this subsection.

(a) Dissolved oxygen. Instream concentrations shall average at least five and zero-tenths (5.0) mg/L per calendar day and shall not be less than four and zero-tenths (4.0) mg/L except during the April 15 - June 15 spawning season when a minimum of five and one-tenth (5.1) mg/L shall be maintained.

(b) Maximum allowable instream concentrations for nitrite-nitrogen for the protection of human health shall be one and zero-tenths (1.0) mg/L and shall be met at the edge of the assigned mixing zone.

Section 10. Exceptions to Criteria for Specific Surface Waters. (1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation for specific surface water upon demonstration by an applicant that maintenance of applicable water quality criteria is not attainable or scientifically valid but the use designation is still appropriate.

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved, either on a seasonal or year-round basis due to natural conditions or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation.

(a) Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that shall be consistent with those outlined in Chapter 3 of Water Quality Standards Handbook, EPA, 1994.

(b) In addition, an applicant shall supply the documentation listed in 401 KAR 10:026, Section 3.

(3) An exception to criteria listed in Table 1 of Section 6 of this administrative regulation for the protection of human health from the consumption of fish tissue may be granted if it is demonstrated that natural, ephemeral, intermittent, or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters shall be attained and maintained.

(5) All exceptions to water quality criteria shall be subject to review at least every three (3) years.

(6) Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them with the respective surface water in 401 KAR 10:026.

Section 11. Exceptions to Criteria for Individual Dischargers. (1) An exception to criteria may be granted to an individual discharger based on a demonstration by the discharger,[,] that KPDES permit compliance with existing instream criteria cannot be attained because of factors specified in 401 KAR 10:026, Section 2(4)(a) through (f).

(2) The demonstration shall include an assessment of alternative pollution control strategies and biological assessments that indicated designated uses are being met.

(3) Before granting an exception, the cabinet shall ensure that the water quality standards of downstream waters shall be attained and maintained.

(4) All exceptions shall be submitted to the cabinet for review at least every three (3) years. Upon review, the discharger shall demonstrate to the cabinet the effort the discharger made to reduce the pollutants in the discharge to levels that would achieve existing applicable water quality criteria.

(5) The highest level of effluent quality that can be economically and technologically achieved shall be ensured while the exception is in effect.

(6) The Kentucky Pollution Discharge Elimination System permitting program shall be the mechanism for the review and public notification of intentions to grant exceptions to criteria.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Water Quality Standards Handbook-Chapter 3", EPA August 1994, Publication EPA-823-B-94-005a, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.; and

(b) "Interim Economic Guidance for Water Quality Standards Workbook", EPA March 1995, Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: November 8, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

CONTACT PERSON: Sandy Gruzesky, Director, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Sandy.Gruzesky@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes water quality standards for surface waters of the Commonwealth and the associated water quality criteria necessary to protect designated uses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the protection of public health, aquatic habitat, and designated uses of the surface waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100, which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to pro-

tect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation describes the criteria applied in 401 KAR 10:026 to the surface waters of the Commonwealth. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by providing specific criteria and water quality standards for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes a citation to an outdated Executive Order; clarifies the cabinet's nutrient criteria, including amending after comment the nutrient criterion to further clarify the preventative nature of the narrative nutrient criterion; updates water quality criteria, specifically acrolein and phenol, to reflect scientific developments; and eliminate the Warm Water Aquatic Habitat acute criterion for Selenium. EPA has previously expressed concern regarding the methodology used by EPA to develop this criterion, mainly that the criterion represents a projection from the chronic criterion and is not based on empirical data. The elimination of the acute selenium criterion recognizes that on June 2, 2000 in accordance with a ruling by the U. S. Court of Appeals, EPA withdrew the acute criterion for selenium it had promulgated for the Great Lakes basin. Until the EPA promulgates new criteria that accounts for the latest science and complexity of the causative selenium species that result in acute toxicity, the cabinet is proposing to withdraw that criterion. This amendment also deletes a criterion for automatic inclusion for a designation of Outstanding State Resource Water; clarifies that dissolved oxygen is an instream criterion, and is amended after comment to address a legacy typo in the water quality standard for Polychlorinated Biphynols (PCBs). Other minor amendments are proposed to comply with regulation drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to water quality criteria is necessary to revise criteria to protect human health and to meet federal recommendations. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131. This administrative regulation is being amended after comment as part of the triennial review. The other amendments to the regulation simply clarify the cabinet's interpretation of this administrative regulation. Other minor amendments are proposed to comply with regulation drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100, which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This amendment establishes procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This amendment establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by providing clear and up-to-date criteria and water quality standards for the protection of surface waters of the Commonwealth in accordance with the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to the surface waters of the Commonwealth. All individuals, businesses, organization, and governments that use the commonwealth's surface waters may be impacted by this regulation if they apply for a new or expanded discharge permit.

(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 revised water quality criteria will be implemented at the time of permit issuance at existing facilities and new dischargers and expanded facilities will comply with the revisions. Additional costs may be incurred where criteria are more stringent than before or where new criteria are established and less cost will be incurred where criteria have been lowered.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the site location, the type of activity occurring, and other factors. Therefore, it is not possible to determine quantitative costs to implement this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Less costs may be incurred where criteria are less stringent than previously. Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

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

(a) Initially: There are no initial costs as a result of amending this administrative regulation.

(b) On a continuing basis: There are no continuing costs as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be the General Fund as appropriated by the Kentucky General Assembly and federal Clean Water Act grant funds.

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

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Water quality standards and associated criteria vary based on the designated use of the surface water.

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 the wastewater treatment operations of local government if they will have new or expanded discharges into surface waters of the Commonwealth.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1341

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local agencies to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local agencies to implement this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Wastewater treatment costs may increase for those local governments that will have new or expanded discharges into exceptional waters and high quality waters. Local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131, including the requirement for reviewing water quality criteria for appropriate revisions.

2. State compliance standards. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards. 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1341

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. There are no stricter standards or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Technical and Administrative Support
(Amended After Comments)

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)[~~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[~~chair~~] in accordance with the requirements of KRS 61.872(2).

(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[~~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. 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 5[~~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[~~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[~~fund~~] money;

4. A conservation easement **held by the Commonwealth through the board for the use and benefit of the citizens of the Commonwealth in a manner consistent with KRS 146.550 through KRS 146.570 and the purposes for which the property was acquired**[~~**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[~~to be a committee, subject to approval of the board~~], and shall be a voting ex officio member of each committee.

(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.~~]

(6)[~~(7)~~] Committee membership shall be established at the last meeting of each calendar year.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

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 meetings, establishing quorums, determining officers and committees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to lay out 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. The amendment made in response to comment was to clarify that conservation easements are made for the benefit of the citizens of the Commonwealth.

(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. The amendment made in response to comment was to clarify that conservation easements are made for the benefit of the citizens of the Commonwealth.

(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. The amendment made in response to comment conforms to the authorizing statute by clarifying conservation easements are made for the benefit of the citizens of the Commonwealth not the board.

(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. The amendment made in response to comment will assist in the effective administration of the statutes by clarifying the citizens of the Commonwealth will benefit from the conservation easements held by the Commonwealth.

(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 comply with the minor changes associated with these amendments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any additional cost for entities identified in (3) 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 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

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Technical and Administrative Support
(Amended After Comments)

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 KRS 146.570(4)(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[~~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~~

~~c. 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;[~~(f) The information in the application package;~~]

(e)[~~(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~~

~~(l) 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.[~~(c) 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 4[~~5~~]. Incorporation by Reference. (1)The following material is incorporated by reference:

(a) "Kentucky Heritage Land Conservation Fund Board Grant Application Form **(July 2012)**, Form Number HL-1(a)."

(b) "Preliminary Resource Management Plan Instructions **(July 2012)**, Form Number HL-1(b)."

(c) "Preliminary Resource Management Plan Template **(July 2012)**, 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: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

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. The amendment made in response to comment simply inserts an edition date for the material incorporated by reference.

(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. The amendment made in response to comment is necessary to comply with KRS 13A.2251(1)(a).

(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). The amendment made in response to comment conforms to KRS 13A.2251(1)(a).

(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. The amendment made in response to comment will assist in the effective administration of the statutes by inserting and edition date on the forms incorporated by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This 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 twenty (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
(Amended After Comments)

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[~~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 **146.570[~~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 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: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

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. The amendment made in response to comment simply corrects an incorrect statutory reference.

(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. The amendment made in response to comment simply corrects an incorrect statutory reference.

(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. The amendment made in response to comment conforms to the authorizing statutes by correcting an incorrect statutory reference.

(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. The amendment made in response to comment will assist in the effective administration of the statutes by correcting an incorrect statutory reference which will clarify the meaning in Section 5.

(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 twenty (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
(Amended After Comments)

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 **4[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 regulation.

(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.~~

(3)[~~(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[~~Section 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 12[~~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)";

(c) "Annual Management Report (July 2012), Form Number HL-2(c)";

(d) "Annual Management Reporting Form (July 2012)";

(e) "Site Management (July 2012)";

(f) Preliminary Resource Management Plan Instructions (July 2012), Form Number HL-2".[~~(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: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m

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 reference the appropriate forms which contain the information. The amendment made in response to comment simply corrects an incorrect reference.

(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. The amendment made in response to comment is necessary to correct an incorrect reference.

(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. The amendment made in response to comment conforms to the authorizing statutes by correcting an incorrect reference.

(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. The amendment made in response to comment will assist in the effective administration of the statutes by correcting an incorrect reference.

(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 twenty (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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amended After Comments)

501 KAR 16:330. Lethal injection protocols[~~protocol~~].

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213 – 431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the protocols[~~protocol~~] for execution by lethal injection.

Section 1. Procurement, Storage, and Accountability of Substances[~~Chemicals~~]. (1) Upon receipt of an execution order, the warden shall check the supply of substances[~~chemicals~~] and their expiration dates. If additional substances[~~chemicals~~] are needed, the warden shall place an order to obtain the necessary substances[~~chemicals~~] for the lethal injection protocols listed in Section 3 of this administrative regulation[~~an execution by lethal injection~~].

(2) The substances shall be stored **according to the manufacturer's instructions, if applicable, and placed**[~~The warden shall transport the chemicals from the point of procurement and place them~~] in a secured area of the penitentiary in locked containers.[~~Pancuronium bromide shall be stored separately from the other chemicals in its own locked container, which shall be refrigerated at a temperature of at least forty (40) degrees Fahrenheit.~~] The warden shall maintain control of the keys to the secured areas and containers[~~at all times. A duplicate set of keys shall not be made~~].

(3) A log shall be maintained in the storage containers which shall record:

(a) New supplies of substances[~~chemicals~~] received and added to inventory;

(b) Substances[~~Chemicals~~] removed for use;

(c) Disposal of substances[~~chemicals~~] due to expiration; and

(d) Any other reason that a substance[~~chemical~~] is removed or deducted from inventory.

Section 2. Preliminary Steps. (1) The condemned person shall be executed by using the One Drug Protocol in Section 3(2) of this administrative regulation. If the necessary substance or quantity of the substance for the One Drug Protocol is not in the warden's possession by seven (7) days prior to the execution, the condemned person shall be executed by using the Two Drug Protocol in Section 3(3) of this administrative regulation. The commissioner shall notify the condemned person at least seven (7) days prior to the execution of the protocol to be used.

(2)[~~(1)~~] The penitentiary shall have a minimum of two (2) phone lines available for communication with the courts and counsel on the day of execution. The phones shall be checked to determine if they[~~warden shall determine if necessary phone lines~~] are operational prior to the execution.

(3)[~~(2)~~] If the condemned person is to be executed by lethal injection:

(a) If male, his chest shall be shaved by a designated member of the execution team for heart monitor leads on the day of execution; and

(b) The IV team shall complete an examination of the condemned person's veins within twenty-four (24) hours prior to the execution to determine possible locations of the IV sites.

(4)[~~(3)~~] On the day of execution the warden shall provide to the IV team sufficient amounts of each substance[~~chemical~~] listed in Section 3 of this administrative regulation to prepare two (2)[~~complete sets of~~] syringes for the drug protocol selected to be used. One (1) syringe[~~set~~] shall serve as the primary syringe[~~set of syringes~~]. The other syringe[~~set of syringes~~] shall be a back-up[~~set~~].

(5)[~~(4)~~] At the execution building, each substance[~~chemical~~] shall be prepared in accordance with the manufacturer's instructions, if applicable, and drawn into the two (2)[~~sets of~~] syringes by one (1) member of the IV team designated by the warden. The other member of the IV team shall observe preparation of the substances[~~chemicals~~] and verify that the instructions and procedures have been carried out correctly.

(6)[~~(5)~~] Any syringes that are loaded with lethal injection substances[~~chemicals~~] that are not used during the execution shall be[~~:~~

~~(a) Not be used;~~

~~(b) Be returned to the warden; and~~

~~(c) Be~~] destroyed and documented in the log maintained in accordance with Section 1(3) of this administrative regulation.

(7)[~~(6)~~] Any unused substances[~~chemicals~~] that were not prepared for[~~mixed in preparation of~~] the lethal injection shall be:

(a) Returned to the warden;

(b) Locked in the storage container; and

(c) Documented in the log maintained in accordance with Section 1(3) of this administrative regulation.

(8)[~~(7)~~] A member of the IV team shall determine the appropriate size needle based on the examination of the condemned person's veins within the five (5) hours prior to the execution.

(9)[~~(8)~~] The warden shall order the condemned person escorted to the execution chamber and strapped to the gurney.

(10)[~~(9)~~] The IV team shall run the IV lines to the condemned person by the following:

(a) Site and insert one (1) primary IV line; and

(b) Site and insert one (1) backup IV line.

(11)[~~(10)~~] The location of the IV sites on the body of the condemned person shall be determined by the IV team members. The insertion site of preference shall be the following order:

(a) Arms;

(b) Hands;

(c) Ankles; or

(d) Feet.

(12)[~~(11)~~] To best ensure that a needle is inserted properly into a vein, the IV team members shall look for the presence of blood in the valve of the sited needle.

(13)[~~(12)~~] If the IV team cannot secure two (2) IV sites within one (1) hour, the Commissioner shall contact the Governor's Office and request that the execution be scheduled for a later date.

(14)[~~(13)~~] If the IV team is able to establish the two IV lines, the team shall start a saline flow.

(15)[~~(14)~~] The execution team shall:

(a) Securely connect the electrodes of the cardiac monitor to the condemned person; and

(b) Ensure the equipment is functioning.

(16)[~~(15)~~] Counsel assigned by the cabinet and counsel as-

signed by the office of the Attorney General shall be asked whether any stays, orders, pardons, or commutations of sentence have been received.

(17)[~~(16)~~] The viewing curtain shall be opened.

(18)[~~(17)~~] The warden shall announce the execution to the witnesses.

(19)[~~(18)~~] The warden shall ask the condemned person if he wants to make a final statement **and provide a brief opportunity of not less than two (2) minutes for him to do so. The warden may impose reasonable restrictions on the content and length of the statement. The warden may also terminate a statement that he or she believes is intentionally offensive to the witnesses.**~~**[If a statement is made by the condemned person, it shall be limited to two (2) minutes.]**~~ The witnesses shall be allowed to hear the condemned person's statement.

(20)[~~(19)~~] The warden shall order the execution to proceed.

Section 3. Protocols and Sequence of Substances[~~Chemicals~~]. (1) The lethal injection protocols shall be as follows.

(2) One Drug Protocol.

(a) A designated execution team member shall inject via IV three (3) gm of Sodium Thiopental (60 ml of a 50mg/ml solution) or five (5) gm of Pentobarbital (100 ml of a 50 mg/ml solution) under whatever generic or trade names they may be known or sold.

(b) If it appears to the warden based on his visual inspection that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the warden shall stop the flow of the Sodium Thiopental or Pentobarbital in the primary site and order that the backup IV be used with a new flow of the substance.

(c) A designated execution team member shall start a stopwatch once the lethal injection is complete.

(d) A designated execution team member shall:

1. Observe the heart monitor; and

2. Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.

(e) The viewing curtain shall be drawn before the:

1. Coroner enters the chamber to declare death; and

2. Physician enters the chamber to certify the cause of death.

(f) An additional injection of the substance **in the same dose and concentration** listed in paragraph (a) of this subsection shall be used if the:

1. Heart monitor does not indicate a flat line after ten (10) minutes;

2. Coroner is not able to declare death; and

3. Physician is unable to certify the cause of death after the ten (10) minute period.

(g) The injections shall continue until death has occurred.

(h) During the execution by lethal injection the warden and deputy warden shall watch the primary IV site for failure, leakage, the catheter coming out of a vein, or any other problem. If an IV fails or leaks, the catheter comes out of the vein, or any other problem arises, the execution team shall be instructed to switch to the backup IV.

(3) Two Drug Protocol.

(a) A designated execution team member shall inject via IV ten (10) mg of midazolam (5mg/ml concentration) and 40 mg of hydromorphone (10 mg/ml concentration) under whatever generic or trade names they may be known or sold.

(b) If it appears to the warden based on his visual inspection that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the warden shall stop the flow of midazolam and hydromorphone in the primary site and order that the backup IV be used with a new flow of the substances listed for this protocol in paragraph (a) of this subsection.

(c) A designated execution team member shall start a stopwatch once the lethal injection is complete.

(d) A designated execution team member shall:

1. Observe the heart monitor; and

2. Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.

(e) The viewing curtain shall be drawn before the:

1. Coroner enters the chamber to declare death; and

2. Physician enters the chamber to certify the cause of death.

(f) **Except as described in paragraph (g) of this subsection, an[**~~**An**~~**]** additional injection of the lethal substances **in the same doses and concentrations** listed in paragraph (a) of this subsection shall be used if the:

1. Heart monitor does not indicate a flat line after ten (10) minutes;

2. Coroner is not able to declare death; and

3. Physician is unable to certify the cause of death after the ten (10) minute period.

(g) Any additional injections after the initial and second injections shall be sixty (60) mg of hydromorphone (10 mg/ml concentration). The injections shall continue until death has occurred.

(h) During the execution by lethal injection the warden and deputy warden shall watch the primary IV site for failure, leakage, the catheter coming out of a vein, or any other problem. If an IV fails or leaks, the catheter comes out of the vein, or any other problem arises, the execution team shall be instructed to switch to the backup IV[~~At the warden's order to proceed, a designated execution team member shall begin a rapid flow of lethal chemicals in the following sequence:~~

~~(a) Three (3) gm of Sodium Thiopental;~~

~~(b) Twenty-five (25) milligrams of Saline;~~

~~(c) Fifty (50) milligrams of Pancuronium Bromide;~~

~~(d) Twenty-five (25) milligrams of Saline;~~

~~(e) 240 milliequivalents of Potassium Chloride; and~~

~~(f) Twenty-five (25) milligrams of Saline.~~

~~(2) If it appears to the warden based on his visual inspection that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the warden shall stop the flow of Sodium Thiopental in the primary site and order that the backup IV be used with a new flow of Sodium Thiopental and the other chemicals listed in subsection (1) of this section.~~

~~(3) If it appears to the warden based on his visual inspection that the condemned person is unconscious after the injection of Sodium Thiopental, the warden shall order the designated team member to continue the injections of the other chemicals listed in subsection (1) of this section through the primary IV.~~

~~(4) A designated execution team member shall start a stopwatch once the lethal injections are complete.~~

~~(5) A designated execution team member shall:~~

~~(a) Observe the heart monitor; and~~

~~(b) Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.~~

~~(6) The viewing curtain shall be drawn before the:~~

~~(a) Coroner enters the chamber to declare death; and~~

~~(b) Physician enters the chamber to certify the cause of death.~~

~~(7) The warden shall order an additional set of lethal chemicals to be administered if the:~~

~~(a) Heart monitor does not indicate a flat line after ten (10) minutes;~~

~~(b) Coroner is not able to declare death; and~~

~~(c) Physician unable to certify the cause of death during the ten (10) minute period.~~

~~(8) The process established in subsection (1) of this section shall continue until death has occurred.~~

~~(9) During the execution by lethal injection the warden and deputy warden shall watch the primary iv site for failure, leakage, the catheter coming out of a vein, or any other problem. In the event that an IV fails, leaks, if the catheter comes out of the vein, or any other problem arises, the execution team shall be instructed to switch to the backup IV~~].

Section 4. Post Lethal Injection Steps. (1) If the Coroner declares death, the warden shall[~~be informed.~~

~~(2) The warden shall~~] announce the completion of the execution to the witnesses. The viewing curtain shall be open during the warden's announcement.

(2)[~~(3)~~] The witnesses shall be escorted out of the witness room.

Section 5. Stabilization Procedure. (1) Before an execution

commences:

(a) The warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and

(b) A medical crash cart and defibrillator shall be located in the execution building.

(2) If at any time during the execution process the Governor grants a pardon or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:

(a) The execution team shall stop the execution; and

(b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of this section.

Section 6. Volunteer. (1) If a condemned person, who is a volunteer, tells department staff that he does not wish to continue with the execution process, the staff shall tell the warden.

(2) If the execution is in process:

(a) The execution team shall stop the execution; and

(b) If any of the substances[~~chemicals~~] have been injected[~~administered~~], the medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in Section 5(1) of this administrative regulation.

(3) The warden shall allow the condemned person to contact his attorney.

(4) The warden shall notify the commissioner.

(5) The commissioner shall notify the Governor's Office or court issuing the mandate.

LADONNA H. THOMPSON, Commissioner
J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: November 15, 2012

FILED WITH LRC: November 15, 2012 at 10 a.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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the protocols for conducting an execution by lethal injection.

(b) The necessity of this administrative regulation: KRS Chapter 431.220 establishes lethal injection as one of the methods of carrying out the death penalty. KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet, for the government and discipline of penitentiaries, and for official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the process for carrying out an execution by lethal injection.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the lethal injection process, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a clear procedure for execution by lethal injection in this Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: The amendment revises the protocols for execution by lethal injection and expands the protocols to include more than one method of lethal injection.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses issues in pending litigation.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of death penalties. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: The amendment revises the protocols for execution by lethal injection and expands the protocols to include more than one method of lethal injection.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, Lyon County Ambulance Service, Office of the Attorney General, and Kentucky Department of Public Advocacy will also be impacted during the execution process.

(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: Except for the Department of Corrections personnel, none of the entities listed above are mandated to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, $22,000

Kentucky State Police, $2,200 (ten (10) officers at $100 per officer and $200 for fuel for the mobile command center if used)

Kentucky Department of Fish and Wildlife, $450 (salary, meals, and travel for two (2) officers who patrol the lake area in front of the Kentucky State Penitentiary)

Office of the Kentucky State Medical Examiner, $2,000 ($1350 for staff time, consumables, histology, and $650 for toxicology and chemistry studies)

Lyon County Sheriff's Office, $600

Kuttawa Fire Department, volunteer agency with no fiscal impact

Eddyville Fire Department, volunteer agency with no fiscal impact

Kentucky National Guard, $18,975

Lyon County Ambulance Service, $750;

Commonwealth's Attorney for Lyon County, the state's fifty-seven (57) Commonwealth's Attorneys handle the prosecution of capital cases in Kentucky and any post-conviction action in these cases that may be filed in the circuit courts. The Commonwealth's Attorneys and Assistant Commonwealth's Attorneys receive general fund dollars for the prosecution of all felony cases in their respective judicial circuits. Their pay does not increase or decrease depending upon whether they prosecute a death penalty case or a Class D felony. With respect to appellate matters, pursuant to KRS 15.020, the Office of the Attorney General represents the Commonwealth in all felony appeals in the Court of Appeals and the Kentucky Supreme Court. The Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

Kentucky Department of Public Advocacy, $34,463

$31,410.83 (Salaries/benefits of post-conviction attorneys, support staff, operations support, Division Directors)

1,041.60 (State Cars)

1,190.00 (Hotels, including rooms and conference room)

720.00 (Food)

100.00 (Miscellaneous)

$34,462.43 Total

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

entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in Bowling v. Kentucky Department of Corrections, 301 S.W.3d 478 (Ky. 2009). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in Bowling v. Kentucky Department of Corrections, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately $81,438.

(b) On a continuing basis: Each execution is estimated to cost approximately $81,438.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the state agencies listed in 4(b) above, via the biennial budget. For the Lyon County Sheriff's Office and Lyon County Ambulance Service, tax dollars designated to them by the county.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, Lyon County Ambulance Service, Office of the Attorney General, and Kentucky Department of Public Advocacy will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the Supreme Court of Kentucky decision in Bowling v. Kentucky Department of Corrections, 301 S.W.3d 478 (Ky. 2009).

(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 promulgation of this administrative regulation will not generate any revenue for the entities listed in #1 above.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, $22,000;
Kentucky State Police, $2,200;
Kentucky Department of Fish and Wildlife, $450;
Office of the Kentucky State Medical Examiner, $2,000;
Lyon County Sheriff's Office, $600;
Kuttawa Fire Department, volunteer agency with no fiscal impact;
Eddyville Fire Department, volunteer agency with no fiscal impact;
Kentucky National Guard, $18,975;
Lyon County Ambulance Service, $750;
Commonwealth's Attorney for Lyon County, the state's fifty-seven (57) Commonwealth's Attorneys handle the prosecution of capital cases in Kentucky and any post-conviction action in these cases that may be filed in the circuit courts. The Commonwealth's Attorneys and Assistant Commonwealth's Attorneys receive general fund dollars for the prosecution of all felony cases in their respective judicial circuits. Their pay does not increase or decrease depending upon whether they prosecute a death penalty case or a Class D felony. With respect to appellate matters, pursuant to KRS 15.020, the Office of the Attorney General represents the Commonwealth in all felony appeals in the Court of Appeals and the Kentucky Supreme Court. The Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.
Kentucky Department of Public Advocacy, $34,463.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to 3(c) above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

Revenues (+/-): None.
Expenditures (+/-): $81,438.00
Other Explanation: None.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)

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

RELATES TO: KRS 156.160(1)**(h)**[~~(g)~~], 158.444(1)

STATUTORY AUTHORITY: KRS 156.160(1)**(h)**[~~(g)~~], 156.070, 158.444 (1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1)**(h)**[~~(g)~~] and 158.444 (1) give the Kentucky Board of Education the authority to promulgate administrative regulations related to medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the physical welfare and safety of the public school children. The first responsibility of Kentucky schools is to promote learning in a safe and healthy environment for all children, teachers, and staff. The improper use of **physical** restraint and seclusion by districts directly affects the psychological and physical welfare of students and may result in psychological harm, physical harm, or death of students. Because there is no evidence that **physical** restraint **or**[~~and~~] seclusion is effective in reducing the occurrence of inappropriate behaviors, **physical** restraint or seclusion should never be used except in situations where a child's behavior poses immi-

nent danger of serious physical harm to self or others. **Physical** restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and **school personnel[~~staff~~]**. This administrative regulation establishes the requirements for the use of **physical** restraint and seclusion in districts and the notification and data reporting requirements for the use of **physical** restraint and seclusion in districts.

Section 1. Definitions. (1) "Aversive behavioral interventions" means a physical or sensory intervention program intended to modify behavior that the implementer knows would cause physical trauma, emotional trauma, or both, to a student even when the substance or stimulus appears to be pleasant or neutral to others and may include hitting, pinching, slapping, water spray, noxious fumes, extreme physical exercise, loud auditory stimuli, withholding of meals, or denial of reasonable access to toileting facilities.

(2) "**Behavioral[~~Behavior~~]** intervention" means the implementation of strategies to address behavior that is dangerous, inappropriate, or otherwise impedes the learning of the students**[~~or others~~]**.

(3)**[~~"Behavioral Intervention Plan" means a comprehensive plan for managing inappropriate or dangerous behavior by changing or removing contextual factors, antecedents, and consequences that trigger, maintain, or escalate inappropriate or dangerous behavior, and for teaching alternative appropriate behaviors to replace the inappropriate or dangerous behaviors.~~**

~~(4)~~] "Chemical restraint" means the use of medication to control behavior or restrict a student's freedom of movement that includes over-the-counter medications used for purposes not specified on the label but does not include medication prescribed by a licensed medical professional and supervised by qualified and trained individuals in accordance with professional standards.

(4)[~~(5)~~] "Dangerous behavior" means behavior that presents an imminent danger of serious physical harm to self or others but does not include inappropriate behaviors such as disrespect, noncompliance, insubordination, or out of seat behaviors.

(5)[~~(6)~~] "De-escalation" means the use of behavior management techniques intended to mitigate and defuse dangerous behavior of a student, that reduces the imminent danger of serious physical harm to self or others.

(6) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(7) "Emergency" means a sudden, urgent occurrence, usually unexpected but sometimes anticipated, that requires immediate action.

(8)**[~~"Functional Behavioral Assessment" means a process to analyze environmental factors such as any history of trauma, the combination of antecedent factors (factors that immediately precede behavior) and consequences (factors that immediately follow behavior) that are associated with the occurrence of inappropriate or dangerous behavior and includes the collection of information through direct observations, interviews, and record reviews to identify the function of the dangerous behavior and guide the development of behavioral intervention plans.~~**

~~(9)~~] "Mechanical restraint" means the use of any device or equipment to restrict a student's freedom of movement, but does not **mean:**

(a)[~~include~~] Devices implemented by trained school personnel~~,~~ or utilized by a student that have been prescribed by an appropriate medical or related services professional that are used for the specific and approved purposes for which such devices were designed**;**

(b)[~~and that may include~~] Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;

(c) Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;

(d) Restraint for medical immobilization; or

(e) Orthopedically prescribed devices that permit a student to participate in activities **without[~~with~~]** risk of harm.

(9)[~~(10)~~] "Parent" means a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian **of a student**.

(10)[~~(11)~~] "Physical Restraint" means a personal restriction that immobilizes or reduces the ability of a student to move **the student's[~~his or her~~]** torso, arms, legs, or head freely**,** but does not **mean:**

(a)[~~include~~] Temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of encouraging a student to move voluntarily to a safe location**;**

(b) Behavioral interventions, such as proximity control or verbal soothing, used as a response to calm and comfort an upset student;

(c) Less restrictive physical contact or redirection to promote student safety; and

(d) Physical guidance or prompting when teaching a skill or when redirecting the student's attention.

(11)[~~(12)~~] "Positive behavioral supports" means a school-wide systematic approach to embed evidence-based practices and data-driven decision-making to improve school climate and culture in order to achieve improved academic and social outcomes, to increase learning for all students, including those with the most complex and intensive behavior needs; and to encompass a range of systemic and individualized positive strategies to reinforce desired behaviors, to diminish reoccurrence of inappropriate or dangerous behaviors, and to teach appropriate behaviors to students.

(12)[~~(13)~~] "Prone restraint" means the student is restrained in a face down position **on the floor or other surface, and physical pressure is applied to the student's body to keep the student in the prone position**.

(13)[~~(14)~~] "School personnel" means teachers, principals, administrators, counselors, social workers, psychologists, paraprofessionals, nurses, librarians, **school resource officers, other sworn law enforcement officers,** and other support staff who are employed in a school or who perform services in the school on a contractual basis**[~~but does not include school resource officers defined in KRS 158.441(2)~~]**.

(14) "School resource officer" is defined in KRS 158.441(2).

(15) "Seclusion" means the involuntary confinement of a student alone in a room or area from which the student is prevented from leaving but does not **mean[~~include~~]** classroom timeouts, supervised in-school detentions, or out-of-school suspensions.

(16) "Student" means any person enrolled in a preschool, school level as defined in 704 KAR 5:240 Section 5, or other educational program offered by a local public school district.

(17) "Supine restraint" means **the[~~a~~]** student is restrained in a face up position on **the student's[~~his or her~~]** back **on the floor or other surface, and physical pressure is applied to the student's body to keep the student in the supine position**.

(18) "Timeout" means a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.

Section 2. (1) Local **school** districts shall establish**[~~local~~]** policies and procedures that:

(a) Ensure school personnel are aware of and parents are notified how to access **the[~~its~~]** policies and procedures regarding **physical** restraint and seclusion;

(b) Are designed to ensure the safety of all students,**[~~including students with the most complex and intensive behavioral needs,~~]** school personnel, and visitors;

(c) Require school personnel to be trained in accordance with the requirements outlined in Section **6[~~7~~]** of this administrative regulation;

(d) Outline procedures to be followed during and after each **use[~~incident involving the imposition~~]** of physical restraint or seclusion**[~~upon a student~~]**, including notice to parents, documentation of the event in the student information system, and a process for the parent or emancipated youth to request a debriefing session;

(e) Require notification, within twenty four (24) hours, **to[~~of~~]** the

Kentucky Department of Education and local law enforcement in the event of death, substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty resulting from the use of physical restraint or seclusion;

(f) Outline a procedure by which parents may submit a complaint regarding the physical restraint or seclusion of their child, which requires the district and school to investigate the circumstances surrounding the **physical** restraint or seclusion, make written findings, and where appropriate, take corrective action; and

(g) Outline a procedure to regularly review data on **physical** restraint and seclusion usage and revise policies as needed.

(2) Local districts shall revise existing policies or develop policies consistent with this administrative regulation within ninety (90) calendar days of the effective date of this administrative regulation.

Section 3. (1) Physical restraint shall not be used **in public schools or educational programs**:

(a) As punishment **or discipline**;

(b)**[~~As a means of coercion~~]** To force compliance or **to retaliate[~~retaliation~~]**;

(c) As a substitute for appropriate educational or behavioral support;

(d) To prevent property damage in the absence of imminent danger of serious physical harm to self or others;

(e) As a routine school safety measure; or

(f) As a convenience for staff.

(2) School personnel are prohibited from imposing the following on any student at any time:

(a) Mechanical restraint;

(b) Chemical restraint;

(c) Aversive behavioral interventions**[~~that compromise health and safety~~]**;

(d) Physical restraint that is life-threatening;

(e) Prone or supine restraint; and

(f) Physical restraint that is prohibited by a licensed medical professional.

(3) Physical restraint may only be implemented **in public schools or educational programs** if:

(a) The student's behavior poses an imminent danger of serious physical harm to self or others;

(b) The physical restraint does not interfere with the student's ability to communicate in the student's primary language or mode of communication**, unless the student uses sign language or an augmentative mode of communication as the student's primary mode of communication and the implementer determines that freedom of the student's hands for brief periods during the restraint appears likely to result in serious physical harm to self or others**;

(c) The student's **physical and psychological well-being shall be[~~face is~~]** monitored for the duration of the physical restraint;

(d) Less restrictive **behavioral** interventions have been ineffective in stopping the imminent danger of serious physical harm to self or others, except in the case of a clearly unavoidable emergency situation posing imminent danger of serious physical harm to self or others; and

(e) **School personnel implementing the physical restraint are appropriately trained as required in Section 6(3) of this administrative regulation, except to the extent necessary to prevent serious physical harm to self or others in clearly unavoidable emergency circumstances where other school personnel intervene and summon trained school personnel or school resource officers or other sworn law enforcement officers as soon as possible[~~Assigned staff is appropriately trained to use physical restraint~~]**.

(4) When implementing a physical restraint, **school personnel[~~staff~~]** shall use only the amount of force reasonably believed to be necessary to protect the student or others from imminent danger of serious physical harm.

(5) The use of physical restraint shall end as soon as:

(a) The student's behavior no longer poses an imminent danger of serious physical harm to self or others; or

(b) A medical condition occurs putting the student at risk of harm.**[~~(6) School personnel imposing physical restraint in accordance with this regulation shall:~~**

~~(a) Be trained by an individual or individuals who have been certified by a crisis intervention training program that meets the established criteria in Section 6 of this administrative regulation, except in the case of clearly unavoidable emergency circumstances when trained school personnel are not immediately available due to the unforeseeable nature of the emergency circumstance; and~~

~~(b) Be trained in state administrative regulations and school district policies and procedures regarding restraint and seclusion.~~

~~(7) A functional behavioral assessment shall be conducted following the first incident of restraint, unless one (1) has been previously conducted for the behavior at issue.~~]

Section 4. (1) Seclusion shall not be used **in public schools or educational programs**:

(a) As punishment **or discipline**;

(b)**[~~As a means of coercion~~]** To force compliance or **to retaliate[~~retaliation~~]**;

(c) As a substitute for appropriate educational or behavioral support;

(d) To prevent property damage in the absence of imminent danger of serious physical harm to self or others;

(e) As a routine school safety measure;

(f) As a convenience for staff; or

(g) As a substitute for timeout.

(2) Seclusion may only be implemented **in public schools or educational programs if[~~when~~]**:

(a) The student's behavior poses an imminent danger of serious physical harm to self or others;

(b) The student is visually monitored for the duration of the seclusion;

(c) Less restrictive interventions have been ineffective in stopping the imminent danger of serious physical harm to self or others; and

(d) **School personnel implementing the seclusion are[~~Assigned staff is~~]** appropriately trained to use seclusion.

(3) The use of seclusion shall end as soon as:

(a) The student's behavior no longer poses an imminent danger of serious physical harm to self or others; or

(b) A medical condition occurs putting the student at risk of harm.

(4) A setting used for seclusion shall:

(a) Be free of objects and fixtures with which a student could inflict physical harm to self or others;

(b) Provide school personnel a view of the student at all times;

(c) Provide adequate lighting and ventilation;

(d) Be reviewed by district administration to ensure programmatic implementation of guidelines and data related to its use;

(e) Have an unlocked and unobstructed door; and

(f) Have at least an annual fire and safety inspection.

Section 5. (1) All **physical restraints and seclusions[~~incidents of the use of restraint and seclusion~~]** shall be documented by a written record of each **use[~~episode~~]** of seclusion or physical restraint and be maintained in the student's education record. Each**[~~incident~~]** record **of a use of physical restraint or seclusion** shall be informed by an interview with the student and shall include:

(a) The student's name;

(b) A description of the **use of physical restraint or seclusion[~~incident~~]** and the student behavior that resulted in the **physical** restraint or seclusion;

(c) The date of the **physical restraint or seclusion and school personnel[~~incident and staff members~~]** involved;

(d) The beginning and ending times of the **physical restraint or seclusion[~~incident~~]**;

(e) A description of any events leading up to the use of **physical** restraint or seclusion including possible factors contributing to the dangerous behavior;

(f) A description of the student's behavior **during physical[~~in~~]** restraint or seclusion;

(g) A description of techniques used in **physically** restraining or secluding the student and any other interactions between the student and **school personnel[~~staff~~]** during the use of **physical** restraint or seclusion;

(h) A description of any **behavioral** interventions used immediately prior to the implementation of **physical** restraint or seclusion;

(i) A description of any injuries**[~~whether~~]** to students, **school personnel[~~staff~~]**, or others;

(j) **A description as to how the student's[~~An explanation as to why this~~]** behavior posed an imminent danger of serious physical harm to self or others;

(k) The date the parent was notified;

(l) A description of the effectiveness of **physical** restraint or seclusion in de-escalating the situation;**[~~and~~]**

(m) A description of **school personnel[~~staff~~]** response to the dangerous behavior**;**

(n) A description of the planned positive behavioral interventions which shall be used to reduce the future need for physical restraint or seclusion of the student; and

(o) For any student not identified as eligible for services under either Section 504 of the Rehabilitation Act or the Individuals with Disabilities Education Act, documentation of a referral under either law or documentation of the basis for declining to refer the student.

(2) The parent of the student shall be notified of the **physical** restraint and seclusion verbally or through electronic communication, if available to the parent, as soon as possible within twenty-four (24) hours of the incident. If the parent cannot be reached within twenty-four (24) hours, a written communication shall be sent.

(3) The principal of the school shall be notified of the seclusion or physical restraint as soon as possible, but no later than the end of the school day on which it occurred.

(4) The **physical restraint or seclusion[~~incident~~]** record as outlined in Section 5(1) of this administrative regulation shall be completed **by the end of the next school day[~~within twenty-four (24) hours~~]** following the **use[~~incident~~]** of seclusion or physical restraint.

(5) If the parent or emancipated youth requests a debriefing session under Section 2 of this administrative regulation, a debriefing session shall be held after the imposition of **physical** restraint **or[~~and~~]** seclusion upon a student.

(6) **The following persons shall participate in the debriefing session:**

(a) The implementer of the physical restraint or seclusion;

(b) At least two (2) of any other school personnel who were in the proximity of the student immediately before or during the physical restraint or seclusion;

(c) The parent;

(d) The student, if the parent requests or if the student is an emancipated youth; and

(e) Appropriate supervisory and administrative school personnel, which may include appropriate Admissions and Release Committee members, Section 504 team members, or response to intervention team members[~~All school personnel who were in the proximity of the student immediately before and during the time of the incident, the parent, the student, if the parent requests or if the student is an emancipated youth, appropriate supervisory and administrative staff, that may include appropriate Admissions and Release Committee members, Section 504 team members, or response to intervention team members shall participate in the debriefing session~~].

(7) The debriefing session shall occur as soon as practicable, but not later than five (5) school days following the request of the parent or the emancipated youth, unless delayed by written mutual agreement of the parent or emancipated youth and the school.

(8) The debriefing session shall include:

(a) Identification of the events leading up to the seclusion or physical restraint;

(b) Consideration of relevant information in the student's records and information from teachers, parents, other school district professionals, and the student;

(c) Planning for the prevention and reduction of the need for seclusion or physical restraint, with consideration of **recommended appropriate positive behavioral supports and interventions to assist school personnel responsible for implementing the student's IEP, or Section 504 plan, or response to intervention plan, if applicable, and consideration of whether positive behavioral supports and interventions were implemented with fidelity[~~the results of functional behavioral assessments, whether positive behavior plans were implemented with fidelity, recommended appropriate positive behavioral interventions, and supports to assist personnel responsible for implementing the student's IEP, or Section 504 plan, or response to intervention plan, if applicable~~]**; and

(d) For any student not identified as eligible for services under either Section 504 of the Rehabilitation Act or the Individuals with Disabilities Education Act, **consideration[~~evidence~~]** of a referral under either law **and[~~, or~~]** documentation of the **referral or documentation of the** basis for declining to refer the student.

(9) All documentation utilized in the debriefing session shall become part of the student's education record.

Section 6. (1) **All school personnel shall be trained in state regulations and school district policies and procedures regarding physical restraint and seclusion. All** school personnel shall be trained **annually** to use an array of positive **behavioral supports and intervention[~~behavior interventions, strategies, and supports~~]** to increase appropriate student behaviors**, to[~~and~~]** decrease inappropriate or dangerous student behaviors **and to respond to dangerous behavior. This[~~. (2) All school personnel in local districts shall have annual basic training in responding to students in a behavioral crisis and shall receive communication from the district identifying core team staff in the school setting that have been trained to engage in physical restraint or seclusion procedures. The~~]** training may be delivered utilizing web-based applications. **This[~~The~~]** training shall include:

(a) Appropriate procedures for preventing the need for physical restraint and **seclusion[~~crisis intervention~~]**, including positive **behavioral supports and interventions[~~behavior management strategies~~]**;

(b) **State regulations and school district policies and procedures regarding physical restraint and seclusion;**

(c) Proper use of positive reinforcement;

(d)[~~(c)~~] The continuum of use for alternative behavioral interventions;

(e)[~~(d)~~] Crisis prevention;

(f)[~~(e)~~] De-escalation strategies **for responding to inappropriate or dangerous[~~of problematic~~]** behavior, including verbal de-escalation, and relationship building; and

(g) Proper use of seclusion as outlined in Section 4 of this administrative regulation, including instruction on monitoring physical signs of distress and obtaining medical assistance when necessary.

(2) All school personnel shall receive annual written or electronic communication from the district identifying core team members in the school setting who have been trained to implement physical restraint[~~(f) Identification of staff in the school setting that have been trained to engage in physical restraint or seclusion procedures~~].

(3) A core team of selected school personnel shall be designated to respond to **dangerous behavior and to implement[~~emergency situations, including the~~]** physical restraint**[~~or seclusion~~]** of students. The core team**, except school resource officers and other sworn law enforcement officers,** shall receive **additional** yearly training in the following areas:

(a) Appropriate procedures for preventing the **use of physical restraint except as permitted by this administrative regulation[~~need for physical restraint or crisis intervention, that shall include the de-escalation of problematic behavior, relationship building, and the use of alternatives to restraints~~]**;

(b) A description and identification of dangerous behaviors**[~~on the part of students~~]** that may indicate the need for physical restraint**[~~or crisis intervention~~]** and methods for evaluating the risk of harm in indi-

vidual situations, in order to determine whether the use of physical restraint**[~~or crisis intervention~~]** is safe and warranted;

(c) Simulated experience of administering and receiving physical restraint**[~~and crisis intervention~~]**, and instruction regarding the **effect[~~effect(s)~~]** on the person **physically** restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;

(d) Instruction regarding documentation **and notification[~~reporting~~]** requirements and investigation of injuries; and

(e) Demonstration by **core team members of proficiency in the prevention and use of physical restraint[~~participants of proficiency in administering physical restraint and crisis intervention~~]**.

Section 7. The following data shall be reported **by the district** in the student information system related to incidents of **physical** restraint and seclusion:

(1) Aggregate number of uses of physical restraint;

(2) Aggregate number of students placed in physical restraint;

(3) Aggregate number of uses of seclusion;

(4) Aggregate number of students placed in seclusion;

(5) Aggregate number of substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty to students related to physical restraint and seclusion;

(6) Aggregate number of instances of substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty to **school personnel[~~staff~~]** related to physical restraint and seclusion; and

(7) Aggregate number of instances in which a school resource officer **or other sworn law enforcement officer** is involved in the **physical** restraint or seclusion of a student.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070 (4).

TERRY HOLLIDAY, Ph.D.
DAVID KAREM, Chairperson

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 14, 2012 at 4 p.m.

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for appropriate use of physical restraint and seclusion in districts and the notification and data reporting requirements for the use of physical restraint and seclusion in districts.

(b) The necessity of this administrative regulation: This administrative regulation is necessary due to the concerns about the increasing number of injuries and deaths across the nation related to the use of physical restraint and seclusion and the increase in complaints in Kentucky in recent years related to physical restraint and seclusion in Kentucky public schools.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 156.160(1)(h) and KRS 158.444(1) gives the Kentucky Board of Education the authority to promulgate administrative regulations related to medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the physical welfare and safety of the public school children. The first responsibility of Kentucky schools is to ensure that schools promote learning in a safe and healthy environment for all children, and school personnel. The improper use of physical restraint and seclusion by districts directly affects the psychological and physical welfare of students and may result in psychological or physical harm or even death of students.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation[~~will~~] outlines requirements for the use of physical restraint and seclusion so that the safety of children and school personnel will not be compromised.

(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 an amendment.

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

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky will be impacted 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: The proposed regulation will impact schools and districts by providing the detail necessary to carry out their roles and responsibilities related to physical restraint and seclusion in public schools. The training requirement within the regulation may be additional for some districts but other schools and districts have indicated that they already train their school personnel in de-escalation techniques and provide more intensive training for a core team that may physically restrain students. School districts will need to revise policies and procedures that do not align with the regulation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts will need to train school personnel and collect data as outlined by the regulation and will need to revise policies and procedures to align with the regulation's requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If the school district is not currently training a core team of school personnel in physical restraint, the estimated cost will be $1000 per person for initial training and $300 per follow up training. The district may train the entire core team at a school if they choose or they may implement a train-the-trainer model and have directly trained and certified school personnel train other school personnel in order to reduce the financial burden on the district.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Research shows that when best practices such as the ones outlined in the regulation are implemented, the number of incidents of physical restraint and seclusion decrease due to the change in culture of the school and a reduction in the number of escalated and dangerous situations. Also, the number of incidents of injury for students and school personnel decrease when implementing these best practices.

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

(a) Initially: The proposed regulation will cost the Department in increased staff time to prepare online de-escalation training that can be accessed free of charge by all districts to supplement their onsite training.

(b) On a continuing basis: The proposed regulation will cost the Department in increased staff time to provide technical assistance regarding the requirements of the regulation. The majority of the technical assistance can be provided by the regional special education cooperative infrastructure already in place.

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

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

will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160(1)(h) and KRS 158.444(1) and federal law, The Individuals with Disabilities Education Act (IDEA), which requires students to be placed in the "least restrictive environment."

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If school districts have not already been training a core team to implement physical restraint, they will need to identify that core team in each school and, using the train-the-trainer model, train those school personnel. Also, they will need to revise policies and procedures regarding physical restraint and seclusion. Therefore, an increase in expenditure the first year could result.

(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? If the school district is not currently training a core team of staff in physical restraint, the estimated cost will be $1,000 per staff member for initial training. The district may train the entire core team at a school if they choose or they may implement a train-the-trainer model and have directly trained staff and certified staff train other staff in order to reduce the financial burden on the district.

(d) How much will it cost to administer this program for subsequent years? If the school district is not currently training a core team of staff in physical restraint, the estimated cost will be $300 per staff member for follow up training.

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: If school districts have not already been training a core team to implement physical restraint, they will need to identify that core team in each school and, using the train-the-trainer model, train those school personnel. Also, they will need to revise policies and procedures regarding physical restraint and seclusion. Therefore, an increase in expenditure the first year could result.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amended After Comments)

902 KAR 20:420. Pain management facilities.

RELATES TO: KRS 216B.010-216B.131, 216B.990, 218A.175

STATUTORY AUTHORITY: Ky. Acts ch. 1 (SS HB 1), KRS 216B.042, 216B.105, 218A.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 216B.105 allows the cabinet to deny, revoke, modify, or suspend a license issued by the cabinet if it finds that there has been a substantial failure to comply with the provisions of KRS Chapter 216B or this administrative regulation. KRS 218A.175 imposes a physician-ownership or investment requirement on all pain management facilities except for those health facilities operating as a pain management facility on April 24, 2012, unless there is an administrative sanction or criminal conviction relating to controlled substances imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment. This administrative regulation establishes the minimum licensure requirements for the operation of a pain management facility that is exempt from the physician-ownership requirement of KRS 218A.175. Facilities that meet the statutory definition of pain management facility and which are exempt from the physician-ownership requirement of KRS 218A.175 shall comply with the requirements of this emergency administrative regulation by July 20, 2012.

Section 1. Definitions. (1) "Adverse action" shall mean action taken by the Cabinet for Health and Family Services, Office of Inspector General to deny, suspend, or revoke a pain management facility's license to operate.

(2) "License" means an authorization issued by the cabinet for the purpose of operating a pain management facility.

(3) "Licensee" means the owner, individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the pain management facility is vested.

(4) "National and State Background Check Program" means an initiative implemented by the cabinet, with available appropriations and funding, for the performance of:

(a) Registry checks; and

(b) Fingerprint-supported criminal background checks performed by the Department of Kentucky State Police and the Federal Bureau of Investigation.

(5) "Pain management facility" or "facility" is defined by KRS 218A.175 to mean a facility where the majority of patients of the practitioners at the facility are provided treatment for pain that includes the use of controlled substances and:

(a) The facility's primary practice component is the treatment of pain; or

(b) The facility advertises in any medium for any type of pain management services.

(6) "Unencumbered license" shall mean a license that has not been restricted by the state professional licensing board due to an administrative sanction or criminal conviction relating to controlled substances.

Section 2. Exemption from Licensure. A pain management facility shall not include the following:

(1) A hospital, including a critical access hospital, as defined in KRS Chapter 216, a facility owned by the hospital, or the office of a hospital-employed physician;

(2) A school, college, university, or other educational institution or program to the extent that it provides instruction to individuals preparing to practice as physicians, podiatrists, dentists, nurses, physician assistants, optometrists, or veterinarians;

(3) A hospice program or residential hospice facility licensed under KRS Chapter 216B;

(4) An ambulatory surgical center licensed under KRS Chapter 216B; or

(5) A long-term-care facility as defined in KRS 216.510.

Section 3. Ownership. (1) KRS 218A.175 provides that the physician ownership or investment requirement shall not be enforced against any pain management facility existing and operating on April 24, 2012, unless there is an administrative sanction or criminal conviction relating to controlled substances imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's licensure or the person's employment.

(2) A facility licensed pursuant to this administrative regulation shall be immediately disqualified from the physician-ownership exemption of KRS 218A.175, and the cabinet shall revoke the facility's license pursuant to Section 11(3) of this administrative regulation if:

(a) An administrative sanction or criminal conviction relating to controlled substances is imposed on the facility or any person contracted or employed by the facility for an act or omission done within the scope of the facility's licensure or the person's employment; or

(b) A change of ownership occurs.

(3)(a) A change of ownership shall be deemed to occur if any ownership interest, or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another for an existing facility licensed pursuant to this administrative regulation.

(b) The pain management facility's license shall not be transferred to a new owner.

Section 4. Background Checks and Prohibition Against Employment. (1) All owners, operators, and employees, including contract employees of a pain management facility, shall submit to an in-state criminal background check from the Justice and Public Safety Cabinet or Administrative Office of the Courts until such individuals are phased into the cabinet's National and State Background Check Program.

(2) A facility shall not be licensed if owned in part by, contracts with, or employs a physician or prescribing practitioner:

(a) Whose Drug Enforcement Administration number has ever been revoked;

(b) Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction;

(c) Who has had any disciplinary limitation placed on his or her license by:

1. The Kentucky Board of Medical Licensure;

2. The Kentucky Board of Nursing;

3. The Kentucky Board of Dentistry;

4. The Kentucky Board of Optometric Examiners;

5. The State Board of Podiatry;

6. Any other board that licenses or regulates a person who is entitled to prescribe or dispense controlled substances to humans; or

7. A licensing board of another state if the disciplinary action resulted from illegal or improper prescribing or dispensing of controlled substances; or

(d) Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed as Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in this state or the United States.

Section 5. Licensure Application, Fee, and Renewal. (1) An applicant for an initial license as a pain management facility shall, as a condition precedent to licensure, be in compliance with this administrative regulation and KRS 218A.175, which may be determined through an on-site inspection of the facility.

(2) To qualify for licensure under this administrative regulation, a completed "Application for License to Operate a Pain Management Facility", incorporated by reference in Section 12(1)(a) of this administrative regulation, shall be:

(a) Submitted to and received by the cabinet no later than close of business, July 20, 2012; and

(b) Submitted to the cabinet annually thereafter.

(3) The initial fee for licensure and annual fee for re-licensure as a pain management facility shall be $2,000, an amount determined to be sufficient to offset the cost of regulating pain management facilities.

(4) A license shall:

(a) Expire one (1) year from the date of issuance; and

(b) Be renewed if the licensee:

1. Submits a completed "Application for License to Operate a Pain Management Facility" accompanied by the $2,000 annual re-licensure fee; and

2. Has no pending adverse action.

(5) A pain management facility that does not have a pending adverse action but has failed to renew its license on or before the expiration date shall cease operating the facility unless:

(a) The items required under subsection (4)(b) of this section have been submitted; and

(b) The Office of Inspector General has provided the facility with a notice granting temporary authority to operate pending completion of the renewal process.

Section 6. Facility Patients. To determine if the majority of patients of the practitioners at the facility are provided treatment for pain that includes the use of controlled substances, the Office of Inspector General:

(1) Shall have access to the facility pursuant to KRS 216B.042, including the facility's patient records;

(2) Shall calculate the majority of patients based upon the number of unduplicated patients treated in a one (1) month time period; and

(3) May use data from the Kentucky All Schedule Prescription Electronic Reporting (KASPER) Program to determine if the majority of the patients of the facility's practitioners are prescribed controlled substances.

Section 7. Administration. (1) A pain management facility shall be located in a fixed site.

(2) Each pain management facility shall:

(a) Be licensed separately regardless of whether the facility is operated under the same business name or management as another facility; and

(b) Post the license conspicuously in a public area of the facility.

(3) Licensee.

(a) The licensee shall be legally responsible for:

1. All activities within the pain management facility, including the actions of the physicians and prescribing practitioners; and

2. Compliance with federal, state and local laws and regulations pertaining to the operation of the facility, including the Drug Abuse Prevention and Control Act (21 U.S.C. 801 et. seq.) and KRS Chapter 218A.

(b) The licensee shall establish lines of authority and designate an administrator who:

1. May serve in a dual role as the facility's medical director; and

2. Shall be principally responsible for the daily operation of the facility.

(4) Policies. The facility shall establish and follow written administrative policies covering all aspects of operation, including:

(a) A description of organizational structure, staffing and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail the service(s) offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of the service(s);

(e) A description of the administrative and patient care records and reports;

(f) Procedures to be followed if the facility performs any functions related to the storage, handling and administration of drugs and biological; and

(g) Procedures for compliance with KRS 218A.175, which requires a pain management facility to:

1. Accept private health insurance, from an entity registered pursuant to KRS Chapter 304.17A with the Kentucky Department of Insurance, as one (1) of the facility's allowable forms of payment for goods or services provided; and

2. Accept payment for services rendered or goods provided only from the patient or the patient's insurer, guarantor, spouse, parent, guardian, or legal custodian.

(5) Referral. If an individual seeks or is in need of care and treatment in excess of services beyond the scope of services of-

fered by the pain management facility, the facility:

(a) Shall immediately advise the individual that he or she should seek services elsewhere; and

(b) May make a referral on behalf of the individual.

(6) Personnel.

(a) Prescribers. All prescribers employed or contracted by a pain management facility shall be board certified and have a full, active, and unencumbered license to practice in the Commonwealth issued under KRS Chapter 311 or KRS Chapter 314.

(b) Medical director.

1. The facility's medical director shall:

a. Be responsible for complying with all requirements related to the licensure and operation of the facility;

b. Be physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients are present in the facility; and

c. Be board certified and have a full, active, and unencumbered license to practice medicine in the Commonwealth issued under KRS Chapter 311.

(c) Medical director's qualifications. The facility's medical director shall:

1. Hold a current subspecialty certification in pain management by a member of the American Board of Medical Specialties;

2. Hold a current certificate of added qualification in pain management by the American Osteopathic Association Bureau of Osteopathic Specialists;

3. Hold a current subspecialty certification in hospice and palliative medicine by a member board of the American Board of Medical Specialties;

4. Hold a current certificate of added qualification in hospice and palliative medicine by the American Osteopathic Association Bureau of Osteopathic Specialists;

5. Hold a current board certification by the American Board of Pain Medicine;

6. Hold a current board certification by the American Board of Interventional Pain Physicians;

7. Have completed an accredited fellowship in pain management; or

8. Is an owner of or practices in the specific facility applying for licensure as a pain management facility and **meets**[~~meet~~] the following qualifications:

a. Completed an accredited residency which included a component in the practice of pain management;

b. Practiced in the specialty of pain management during the five (5) year period preceding July 20, 2012;

c. Is eligible for and has provided the Kentucky Board of Medical Licensure and the Office of Inspector General with written verification that the facility's medical director has registered to complete the certification examination offered by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians in April 2013; and

d. Becomes certified by the American Board of Pain Medicine or by the American Board of Interventional Pain Physicians by September 1, 2013. If the physician fails the certification examination or fails to become certified by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians by September 1, 2013, the physician shall meet one (1) of the requirements of subparagraphs 1. through 7. of this paragraph to continue to be qualified as the facility's medical director.

(d) Within ten calendar (10) days after termination of the medical director, the facility shall notify the cabinet of the identity of the individual designated as medical director, including the identity of any interim medical director until a permanent director is secured for the facility.

(e) The facility's medical director shall sign and submit the "Pain Management Facility Data Reporting Form", incorporated by reference in Section 12(1)(b) of this administrative regulation, to the cabinet within thirty (30) calendar days of the quarter ending March 31, June 30, September 30, and December 31 of each year. The medical director shall document the following on the Pain Management Facility Data Reporting Form:

1. The number of new and repeat patients seen and treated at the facility who are prescribed controlled substance medications for the treatment of chronic, nonmalignant pain;

2. The number of patients discharged due to drug abuse;

3. The number of patients discharged due to drug diversion; and

4. The number of patients treated at the facility whose domicile is located somewhere other than in Kentucky. A patient's domicile shall be the patient's fixed or permanent home to which he or she intends to return even though he or she may temporarily reside elsewhere.

(f) The medical director shall, within ten (10) days after the facility hires a prescriber of controlled substances or ten (10) days after termination of a prescriber of controlled substances, notify the cabinet in writing and report the name of the prescriber.

(7) Staffing. At least one (1) physician and one (1) **practical nurse, licensed practical nurse, or** registered nurse shall be on duty in the facility during all hours the facility is operational.

(8) Job descriptions. There shall be a written job description for each position which shall be reviewed and revised as necessary.

(9) Personnel records. Current personnel records shall be maintained for each employee and include the following:

1. Name, address and social security number;

2. Evidence of current certification or licensure of personnel;

3. Records of training and experience;

4. Records of performance evaluation; and

5. Annual verification of certification or licensure.

(10) In-service training.

(a) All personnel shall participate in orientation and annual in-service training programs relating to their respective job activities.

(b) All licensed prescribers in a pain management facility shall comply with the professional standards established by their respective licensing boards for the completion of continuing professional education**, and each licensed physician who prescribes or dispenses controlled substances to patients in the facility as part of his or her employment agreement with the facility shall successfully complete a minimum of ten (10) hours of Category I continuing medical education in pain management during each registration period throughout his or her employment agreement with the facility**.

(11) Quality assurance program.

(a) Each pain-management facility shall have an ongoing quality assurance program that:

1. Monitors and evaluates the quality and appropriateness of patient care;

2. Evaluates methods to improve patient care;

3. Identifies and corrects deficiencies within the facility;

4. Alerts the designated physician or prescribing practitioner to identify and resolve recurring problems; and

5. Provides for opportunities to improve the facility's performance and to enhance and improve the quality of care provided to the public.

(b) The medical director shall establish a quality assurance program that includes the following components:

1. The identification, investigation, and analysis of the frequency and causes of adverse incidents to patients;

2. The identification of trends or patterns of incidents;

3. The development and implementation of measures to correct, reduce, minimize, or eliminate the risk of adverse incidents to patients; and

4. The documentation of these functions and periodic review no less than quarterly of such information by the designated physician or prescribing practitioner.

(12) Medical records. Each pain management facility shall maintain accurate, readily accessible, and complete medical records that conform to the professional standards established by the respective licensing board for prescribers of controlled substances in the facility.

(13) Professional standards for prescribing and dispensing controlled substances.

(a) All licensed prescribers in a pain management facility shall comply with the professional standards relating to the prescribing and dispensing of controlled substances established by their professional licensing boards.

(b) A representative from the Office of Inspector General shall review facility records, including the facility's patient records, to verify facility compliance with administrative regulations promulgat-

ed by professional licensing boards pursuant to KRS 218A.205 which establish standards for licensees authorized to prescribe or dispense controlled substances.

Section 8. Equipment. Equipment used for direct patient care by a pain management facility shall comply with the following:

(1) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

(2) All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, registered or certified in accordance with applicable state statutes and administrative regulations; and

(3) A written plan shall be developed and maintained to provide for training of personnel in the safe and proper usage of the equipment.

Section 9. Physical Environment. (1) Accessibility. The facility shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. An initial license to operate a pain management facility or a new license to operate a facility upon approval of a change of location shall not be issued before the facility obtains approval from the State Fire Marshal's office.

(3) Physical location and overall environment.

(a) The facility shall:

1. Comply with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;

5. Provide a restroom;

6. Have an administrative area, including room for storage of medical records, supplies, and equipment;

7. Have private patient examination rooms;

8. Have treatment rooms, if treatment is being provided to the patients; and

9. Display a printed sign located in a conspicuous place in the waiting room viewable by the public with the name and contact information of the facility's medical director and the names of all physicians and prescribers practicing in the facility.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.

(4) Housekeeping and maintenance services.

(a) The facility shall maintain a clean and safe facility free of unpleasant odors.

(b) Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

(c)1. The facility shall provide a hand washing facility in each exam room with:

a. Hot and cold water and blade type operating handles;

b. Knee or foot controls; or

c. Motion activated technology.

2. A soap dispenser, disposable towels or electronic hand dryers, and a waste receptacle shall be provided at each hand washing sink.

(d) The premises shall be well kept and in good repair. Requirements shall include:

1. The facility shall ensure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors which can be opened for ventilation shall be screened;

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly; and

4. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(5) The facility shall develop written infection control policies that are consistent with Centers for Disease Control guidelines and include:

(a) Prevention of disease transmission to and from patients, visitors, and employees, including:

1. Universal blood and body fluid precautions;

2. Precautions against airborne transmittal of infections;

3. Work restrictions for employees with infectious diseases; and

4. Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(b) The facility shall provide in-service education programs annually on the cause, effect, transmission, prevention, and elimination of infections.

(6) Hazardous cleaning solutions, compounds, and substances shall be:

(a) Labeled;

(b) Stored in closed metal containers;

(c) Kept separate from other cleaning materials; and

(d) Kept in a locked storage area apart from the exam room.

(7) The facility shall be kept free from insects and rodents, and their nesting places.

(8) Garbage and trash:

(a) Shall be removed from the premises regularly; and

(b) Containers shall be cleaned daily.

(9) A facility shall establish and maintain a written policy for the handling and disposal of wastes, including any infectious, pathological, and contaminated wastes, which shall include the following:

(a) Sharp wastes shall be segregated from other wastes and placed in puncture-resistant containers immediately after use.

(b) A needle or other contaminated sharp shall not be recapped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

(c) A sharp waste container shall be incinerated on or off-site or rendered nonhazardous.

(d) Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.

(10)(a) Disposable waste shall be:

1. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and

2. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel or patients to waste materials.

(b) The facility shall establish specific written policies regarding handling and disposal of waste material.

Section 10. Inspections. (1) The cabinet shall conduct unannounced inspections of the pain management facility no less than annually, including a review of the patient records, to ensure that the facility complies with the provisions of this administrative regulation and KRS 218A.175.

(2) A representative from the Office of Inspector General shall have access to the facility and the facility's records pursuant to KRS 216B.042.

(3) Violations.

(a) The Office of Inspector General shall notify the pain management facility in writing of a regulatory violation identified during an inspection.

(b) The facility shall submit to the Office of Inspector General, within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

1. The plan shall be signed by the facility's administrator, the licensee, or the medical director and shall specify:

a. The date by which the violation shall be corrected;

b. The specific measures utilized to correct the violation; and

c. The specific measures utilized to ensure the violation will not recur.

2. The Office of Inspector General shall review the plan and notify the facility of the decision to:

a. Accept the plan;

b. Not accept the plan; or

c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2).

3. The notice specified in subparagraph 2b of this paragraph shall:

a. State the specific reasons the plan is unacceptable; and

b. Require an amended plan of correction within ten (10) days of receipt of the notice.

4. The Office of Inspector General shall review the amended plan of correction and notify the facility in writing of the decision to:

a. Accept the plan;

b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or

c. Require the facility to submit an acceptable plan of correction.

5. A facility that fails to submit an acceptable amended plan of correction shall be notified that the license will be denied, suspended, or revoked in accordance with KRS 216B.105(2).

(4) Complaints. An unannounced inspection shall be conducted:

(a) In response to a credible, relevant complaint or allegation; and

(b) According to procedures established in this section.

Section 11. Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Pain Management Facility received if:

(a) The application is received by the cabinet after close of business on July 20, 2012;

(b) The facility fails to comply with Section 4(2) **or Section 7(6)** of this administrative regulation;

(c) Any person with ownership interest in the facility has had previous ownership interest in a health care facility which had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;

(d) An administrative sanction or criminal conviction relating to controlled substances has been imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment; or

(e) The facility fails after the initial inspection to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 10(3) of this administrative regulation.

(2) If during the initial inspection of the pain management facility the cabinet has probable cause to believe that a physician or other prescriber practicing at the facility may be engaged in the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance, the cabinet shall:

(a) Refer the physician or other prescriber practicing at the pain management facility to the appropriate professional licensing board and appropriate law enforcement agency; and

(b) Withhold issuing a license to the facility pending resolution of any investigation into the matter by a licensing board or law enforcement agency, and resolution of the appeals process if applicable.

(3) The cabinet shall revoke a license if it finds that:

(a) There has been a substantial failure by the facility to comply with the provisions of this administrative regulation;

(b) An administrative sanction or criminal conviction relating to controlled substances is imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment;

(c) A change of ownership has occurred;

(d) The facility fails to accept private health insurance as one (1) of the facility's allowable forms of payment for goods or services provided, or the facility fails to accept payment for services rendered or goods provided only from the patient or the patient's insurer, guarantor, spouse, parent, guardian, or legal custodian;

(e) The facility fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 10(3) of this administrative regulation; or

(f) The facility fails to comply with Section 4(2), Section 7(6)(a),(b), or (c), or Section 7(7) of this administrative regulation.

(4) The denial or revocation of a facility's license shall be mailed to the applicant or licensee, by certified mail, return receipt requested, or by personal service. Notice of the denial or revocation shall set forth the particular reasons for the action.

(5) The denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(6) Emergency action to suspend a license.

(a) The cabinet shall take emergency action to suspend a pain management facility's license if the cabinet has probable cause to believe that:

1. The continued operation of the facility would constitute a danger to the health, welfare, or safety of the facility's patients or of the general public; or

2. A physician or other prescriber practicing at the facility may be engaged in the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance.

(b)1. The pain management facility shall cease operating immediately on the date the facility is served with the notice of emergency suspension.

2. Notice of the emergency suspension shall set forth the particular reasons for the action.

(c) If the cabinet issues an emergency suspension of the facility's license pursuant to paragraph (a)2 of this subsection, the cabinet shall refer the physician or other prescriber practicing at the pain management facility to the appropriate professional licensing board and appropriate law enforcement agency.

(7) Notice of an emergency suspension shall be served on the facility by certified mail, return receipt requested, or by personal service.

(8)(a) Any facility required to comply with an emergency suspension issued under subsection (6) of this section may submit a written request for an emergency hearing within five (5) calendar days of receipt of the notice to determine the propriety of the suspension.

(b) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(c) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency suspension.

(d) The emergency suspension shall be affirmed if there is substantial evidence of an immediate danger to the public health, safety, or welfare.

(9) The decision rendered under subsection (8) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to Circuit Court.

(10) If the cabinet issues an emergency suspension, the cabinet shall take action to revoke the facility's license pursuant to subsection (3) of this section if:

(a) The facility fails to submit a written request for an emergency hearing within five (5) calendar days of receipt of notice of the emergency suspension;

(b) The decision rendered under subsection (8) of this section affirms that there is substantial evidence of an immediate danger to the public health, safety, or welfare; or

(c) Referral to a professional licensing board and law enforcement agency in accordance with subsection (6)(c) of this section results in an administrative sanction or criminal conviction relating to controlled substances against a physician or prescribing practitioner employed by, or under contract with the facility.

(11) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OIG 20:240, Application for License to Operate a Pain Management Facility", June 2012 edition; and

(b) "OIG 20:240-1, Pain Management Facility Data Reporting Form", June 2012 edition.

(2) This material may be inspected, copied, or obtained, sub-

ject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARY REINLE BEGLEY, Inspector General
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: November 13, 2012
FILED WITH LRC: November 14, 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: Mary Reinle Begley, Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure by the Cabinet for Health and Family Services of pain management facilities that are exempt from the physician ownership or investment requirements of KRS 218A.175.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish licensure requirements for the operation of existing pain management facilities that are exempt from the physician ownership or investment requirements of KRS 218A.175.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities. This administrative regulation also conforms to KRS 218A.175, which provides for an exemption from the physician ownership or investment requirement.

(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 setting forth the cabinet's licensure requirements for pain management facilities.

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

(a) How the amendment will change this existing administrative regulation: Upon consideration of comments received during the public comment period, this amendment to the new administrative regulation makes the following changes:

- Clarifies that in lieu of a registered nurse, a practical nurse or licensed practical nurse may be used to staff a pain management facility;
- Clarifies that each licensed physician who prescribes controlled substances to patients in the facility must successfully complete a minimum of 10 hours of Category I continuing medical education in pain management during each registration period throughout his or her employment agreement with the facility; and
- Clarifies that failure by the facility's medical director to be physically present in the facility for at least 50% of the time that patients are present in the facility, or failure by the facility's medical director to meet one of the required qualifications established by HB 1 from the 2012 Special Session and Section 7(6)(c) of this administrative regulation may be used to deny the facility's application for licensure.

(b) The necessity of the amendment to this administrative regulation: The amendment of this new administrative regulation is necessary to address public comments received and add clarity to the standards required for licensure as a non-physician owned pain management facility.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this new administrative regulation conforms to the content of KRS 216B.042 by clarifying licensure standards and procedures to ensure safe, adequate, and efficient health facilities. The amendment to this new administrative regulation also conforms to KRS 218A.175.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this new administrative regulation assists in the effective administration of the statutes by setting forth the cabinet's licensure requirements for non-physician owned pain management facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will affect those pain management facilities that meet the requirements for exemption from the physician ownership/investment requirements of KRS 218A.175.

(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: Pain management facilities exempt from the physician-ownership/investment requirements of KRS 218A.175 will be required to comply with the licensure standards established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial and annual fee for licensure as a pain management facility will be $2000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity exempt from the physician-ownership requirement of HB 1 and which demonstrates compliance with this administrative regulation will be approved for licensure as a pain management facility and allowed to continue operating.

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

(a) Initially: The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating pain management facilities, which will include initial and annual surveys conducted by at least one (1) nurse consultant inspector and one (1) pharmacist consultant, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(b) On a continuing basis: The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of regulating pain management facilities 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 used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from cabinet-licensed pain management facilities and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The initial and annual fee for licensure as a pain management facility will be $2000.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial and annual fee for licensure as a pain management facility. Both the initial and annual licensure fee will be $2000.

(9) TIERING: Is tiering applied? (explain why or why not) 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 relates to the licensure of pain management facilities by 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.042 and KRS 218A.175

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 cabinet will collect an initial fee of $2000 from each applicant for licensure as a pain management facility that is exempt from the physician-ownership/investment requirements of KRS 218A.175.

(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 cabinet will collect an annual licensure fee of $2000 from each licensed pain management facility that is exempt from the physician-ownership requirement of HB 1 from the 2012 Special Session of the General Assembly.

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of implementation.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable as the licensure fee is anticipated to cover the cost of implementation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Amended After Comments)

902 KAR 55:110. Monitoring system for prescription controlled substances.

RELATES TO: KRS 218A.010(9), 218A.202, 218A.240

STATUTORY AUTHORITY: KRS 194A.050, 218A.202(1), 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.202(1) directs the Cabinet for Health and Family Services to establish an electronic system for monitoring Schedule II, III, IV, and V controlled substances that are dispensed in the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained authorization to operate from the Kentucky Board of Pharmacy. KRS 218A.250 requires the cabinet to promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of KRS Chapter 218A. The purpose of this administrative regulation is to establish criteria for reporting prescription data, providing reports to authorized persons, and a waiver for a dispenser who does not have an automated recordkeeping system.

Section 1. Definitions. (1) "Branch" means the Drug Enforcement and Professional Practices Branch in the Division of Audits and Investigations, Office of Inspector General, Cabinet for Health and Family Services.

(2) "Cabinet personnel" means an individual who:

(a)1. Is directly employed by the Cabinet for Health and Family Services; or

2. Is employed by an agent or contractor of the cabinet;

(b) Has undergone KASPER training; and

(c) Has been approved to use the KASPER system.

(3) "Dispenser" is defined by KRS 218A.010(9), and shall:

(a) Include a dispenser who has a DEA (Drug Enforcement Administration) number or is a pharmacist who owns or is employed by a facility that operates a pharmacy which has a DEA number; and

(b) Not include an individual licensed to practice veterinary medicine under KRS Chapter 321.

(4) "**Health facility" is defined by KRS 216B.015(13).**

(5) "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.

(6)[~~(5)~~] "Patient identifier" means a patient's:

(a) Full name;

(b) Address, including zip code;

(c) Date of birth; and

(d) Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.

(7) "**Practitioner" is defined by KRS 218A.010(33).**

(8)[~~(6)~~][~~"KASPER Reporting Form" means a form that:~~

~~(a) Is in the format of the "KASPER Reporting Form" incorporated by reference in Section 7 of this administrative regulation; and~~

~~(b) Contains the information specified by Section 2(2) of this administrative regulation.~~

~~(7)~~] "Report" means a compilation of data concerning a patient, dispenser, practitioner, or controlled substance.

Section 2. Data Reporting. (1) A dispenser or a **health** facility that has a DEA number shall report all dispensed Schedule II, III, IV, or V controlled substances, except during the circumstances specified in KRS 218A.202(3)(a) and (b).

(2)**[~~Reports pursuant to subsection (1) of this section shall not be required for:~~**

~~(a) A long-term care facility as defined by KRS 216.510(1);~~

~~(b) An ambulance provider; or~~

~~(c) A jail, correctional or detention facility, or a juvenile detention facility.~~

~~(3)~~] A dispenser of a Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet's agent:

(a) Patient identifier;

(b) National drug code of the drug dispensed;

(c) Metric quantity of drug dispensed;

(d) Date of dispensing;

(e) Estimated day's supply dispensed;

(f) Drug Enforcement Administration registration number of the prescriber;

(g) Serial number assigned by the dispenser; and

(h) The Drug Enforcement Administration registration number of the dispenser.

(3)[~~(4)~~](a) Prior to July 1, 2013,[~~(3)~~] the data identified in subsection **(2)[~~(3)~~]**[~~(2)~~] of this section shall be transmitted within seven (7) days of the date of dispensing unless the cabinet grants an extension.

(b) **Prior to July 1, 2013, a dispenser that dispenses a controlled substance for the direct administration of the controlled substance to or for a patient in a licensed health facility shall not be required to transmit the data identified in subsection (2) of this section.**

(c) Effective July 1, 2013, the data identified in subsection **(2)[~~(3)~~]** of this section shall be transmitted no later than close of business on the business day immediately following the dispensing unless the cabinet grants an extension.

(4)[~~(5)~~][~~(4)~~](a) An extension may be granted if:

1. The dispenser suffers a mechanical or electronic failure; or

2. The dispenser cannot meet the deadline established by subsection **(3)[~~(4)~~]**[~~(3)~~] of this section because of reasons beyond his or her control.

(b) A dispenser shall apply to the branch in writing for an extension listed in paragraph (a) of this subsection within twenty-four (24) hours of discovery of the circumstances necessitating the request or on the next date state offices are open for business, following the discovery. An application for an extension shall state the justification for the extension and the period of time for which the extension is necessary.

(5)[~~(6)~~][~~(5)~~] An extension shall be granted to a dispenser if the cabinet or its agent is unable to receive electronic reports transmitted by the dispenser.

(6)[~~(7)~~][~~(6)~~] Except as provided in subsection **(8)[~~(9)~~]** of this section, the data shall be transmitted by:

(a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent;

(b)[~~Double sided, high density micro floppy disk;~~

~~(c) One-half (1/2) inch nine (9) track 1600 or 6250 BPI magnetic tape;~~

~~(d)~~] Secure File Transfer Protocol;

(c)[~~(e)~~] https protocol; or

(d)[~~(f) CD/DVD; or~~

~~(g)~~] Secure Virtual Private Network connection.

(7)[~~(8)~~][~~(7)~~] The data shall be transmitted in the format established by the "ASAP Telecommunications Format for Controlled Substances", developed by the American Society for Automation in Pharmacy, Version 4.1[~~May 1995~~], or a comparable format approved by the branch.

(8)[~~(9)~~][~~(8)~~] A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the format established by "ASAP Telecommunications Format for Controlled Substances", shall report the data identified in subsection **(2)[~~(3)~~]** of this section using an Internet accessible web portal designated by the cabinet.[~~be granted a waiver from the electronic reporting requirement if the dispenser:~~

~~(a) Makes a written request to the branch within twenty-four (24) hours of discovery and of the circumstances necessitating the request, or on the next date that state offices are open for business following the discovery; and~~

~~(b) Agrees in writing to immediately begin reporting the data by submitting a completed "KASPER Reporting Form" or comparable document approved in writing by the branch.~~]

Section 3. Compliance. A dispenser may presume that the patient identification information established in Section 5 of this administrative regulation and provided by the patient or the patient's agent is correct.

Section 4. Request for Report. (1) A written or electronic request shall be filed with the cabinet prior to the release of a report, except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction.

(2) A request for a KASPER patient report shall be made electronically at www.chfs.ky.gov/KASPER [~~http://chfs.ky.gov/oig/kasper~~].

(3) A request for a KASPER provider report **made by[~~from~~]** a peace officer authorized to receive data under KRS 218A.202, or a designated representative of a board responsible for the licensure, regulation, or discipline of prescribing practitioners shall be made by written application on the "Request for KASPER Report (Law Enforcement and Licensure Boards)", Form DCB-15L.

(4) A medical examiner engaged in a death investigation pursuant to KRS 72.026 may **query[~~request a~~]** KASPER **for a** report on the decedent.[~~one (1) of the following forms:~~

~~(a) For law enforcement, on the "Request for Law Enforcement KASPER Report", Form DCB-15L;~~

~~(b) For judiciary, on the "Request for KASPER Report (Court)", Form DCB-15J; or~~

~~(c) For pharmacy, on the "Request for KASPER Report", Form DCB-15P.~~]

Section 5. Patient Identification Number. (1) A patient or the person obtaining the controlled substance on behalf of the patient shall disclose to the dispenser the patient's Social Security number for purposes of the dispenser's mandatory reporting to KASPER.

(2) If a patient is an adult who does not have a Social Security number, the patient's driver's license number shall be disclosed.

(3) If a patient is an adult who has not been assigned a Social Security number or a driver's license number, the number 000-00-0000 shall be used.

(4) If a patient is a child who does not have a Social Security number or a driver's license number, the**[~~Social Security number, driver's license number, or the~~]** number "000-00-0000"**[~~, as applicable, of the parent or guardian~~]** shall be used.

(5) If a patient is an animal,[~~the owner's Social Security number, driver's license number, or~~] the number "000-00-0000"[~~, as applicable,~~] shall be used in the Social Security number field.

Section 6. KASPER Data and Trend Reports. Cabinet personnel shall be authorized access to the data obtained from the KASPER system and trend reports in accordance with KRS 218A.240(7)(a).

Section 7. Data Retention. Data shall be maintained in KASPER for a period of two (2) years plus the current year prior to its transfer to the State Archives Center.

Section 8. Error Resolution. (1) A patient**, practitioner, pharmacist, health facility, or private practitioner's office or clinic** to whom a report has been disclosed under KRS 218A.202(8) **or this administrative regulation** may request that information contained in KASPER be corrected if the patient**, practitioner, pharmacist, health facility, or private practitioner's office or clinic** believes that any information**[~~related to himself or herself~~]** is inaccurate. The patient,**[~~or~~]** patient's representative**, practitioner, pharmacist, health facility, or private practitioner's office or clinic** shall:

(a) Contact the dispenser who reported the information required by Section 2**(2)[~~(3)~~]** of this administrative regulation; and

(b) Request that the dispenser correct the information.

(2) If, upon receipt of a request from a patient,**[~~or~~]** patient's representative**, practitioner, pharmacist, health facility, or private practitioner's office or clinic** pursuant to subsection (1) of this section, the dispenser confirms that the information was reported in error, the dispenser shall:

(a) Transmit corrected information to update the KASPER database **within seven (7) days of the request for the correction**; and

(b) Notify the patient,**[~~or~~]** patient's representative**, practitioner, pharmacist, health facility, or private practitioner's office or clinic** that the corrected information has been transmitted.

(3) If a dispenser maintains that information regarding the dispensing of a controlled substance was correctly reported to KASPER and the KASPER system generates a report with inaccurate information, the dispenser shall contact the Drug Enforcement and Professional Practices Branch (DEPPB) to identify the source of an error in the KASPER report, and the cabinet shall correct the information in the KASPER database.

(4) Upon correction of information in the KASPER database pursuant to subsection **(3)[~~(4)~~]** of this section, cabinet staff shall notify the patient,**[~~or~~]** patient's representative**, practitioner, pharmacist, health facility, private practitioner's office or clinic** within five (5) working days of the correction.

Section 9. Referrals to Licensing Boards. If the cabinet becomes aware that a prescriber or dispenser has failed to comply with the reporting requirements of KRS 218A.202 and this administrative regulation, the cabinet shall notify the licensing board or agency responsible for licensing the prescriber or dispenser.

Section 10. **Disclosure of Data or Report. (1) The cabinet shall only disclose data to the persons and entities authorized to receive that data under KRS 218A.202(6) and this administrative regulation.**

(2)(a) In addition to the purposes authorized under KRS 218A.202(6), the cabinet shall disclose data or a report to a designated class of employees or to a designated employee or employees in a health facility, or a private practitioner's office or clinic with twenty (20) or more practitioners, if a practitioner has given written consent for the health facility, office, or clinic to query KASPER.

(b) A private practitioner's office or clinic with fewer than twenty (20) practitioners may submit a written request to the cabinet for a KASPER account in which data or a report is disclosed to a designated class of employees or to a designated employee or employees.

(3) As a condition precedent to the disclosure of data or a report pursuant to subsection (2) of this section, a health facility or a private practitioner's office or clinic shall maintain, and provide upon request by the cabinet, a copy of the health facility, or private office or clinic's policy for the management of KASPER data and reports which:

(a) Describes the health facility, or private office or clinic's process for designating an employee or employees, or class of employees;

(b) Describes the health facility, or private office or clinic's process for maintaining a record of practitioners who have granted written consent for the health facility, or private office or clinic to request KASPER data or a report;

(c) Describes the health facility, or private office or clinic's internal procedures for educating the designated employee or employees, or class of employees on the:

1. Proper use of the KASPER system;

2. Prohibition on the improper use or intentional disclosure of KASPER data to unauthorized individuals; and

3. Sanctions imposed for the improper use or intentional disclosure of KASPER data to unauthorized individuals, including criminal misdemeanor offenses; and

(d) Describes the health facility, or private office or clinic's internal procedures for auditing the account, including:

1. The manner in which an employee is added to or removed from access to the account if the employee ends employment or is no longer designated to query KASPER; and

2. The actions taken if a designated employee with access to the employer's KASPER account intentionally misuses his or her privileges to KASPER data or a report, which shall include a report of the incident to the Office of Inspector General.

(4) An individual authorized to receive data under KRS 218A.202(6) and this administrative regulation shall not provide the data to any other entity except as provided in KRS 218A.202(8).

(5) A health facility or the private offices or clinics of practitioners shall maintain and adhere to the entity's internal policy regarding the management of KASPER data and reports.

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

(a) "ASAP Telecommunications Format for Controlled Substances", American Society for Automation in Pharmacy, Version 4.1; and[~~May, 1995;~~]

(b)[~~"KASPER Reporting Form", July 2008;~~

~~(c)~~] "Request for[~~Law Enforcement~~] KASPER Report (Law Enforcement and Licensure Boards)", Form DCB-15L, 12/10.[~~, 5/06;~~

~~(d) "Request for KASPER Report (Court)", Form DCB-15J, 5/06; and~~

~~(e) "Request for KASPER Report", Form DCB-15P, 5/06.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Drug Enforcement and Professional Practices Branch, Office of the Inspector General, Cabinet for Health and Family Services, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[~~This material is also available online at http://chfs.ky.gov/oig/KASPER.htm.~~]

MARY REINLE BEGLEY, Inspector General
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 13, 2012

FILED WITH LRC: November 14, 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: Mary Reinle Begley, Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky All-Schedule Prescription Electronic Reporting (KASPER) system, which requires all dispensers of controlled substances to report to the Cabinet each medication dispensed, including the date, time, and person to whom a medication was dispensed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements related to the KASPER system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.202 by establishing the KASPER system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed in the Commonwealth. This administrative regulation is consistent with the policy mandate of KRS 218A.202 and assists in the identification of unauthorized use and dispensation of controlled substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by implementing the KASPER system and sets forth the mandatory reporting requirements for dispensers of controlled substances.

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

(a) How the amendment will change this existing administrative regulation: Upon consideration of comments received during the public comment period, this amendment to the ordinary administrative regulation makes the following changes: Adds the terms "health facility" and "practitioner" to Section 1, Definitions; Clarifies that prior to July 1, 2013 (the date the one-day reporting requirement of House Bill 1 becomes effective), dispensers that dispense controlled substances for the direct administration of a controlled substance to or for a patient in a health facility are not required to report data to KASPER; Clarifies that if a patient is a child who does not have a Social Security number or a driver's license number, only the number "000-00-0000" shall be reported; Amends Section 8 to clarify that in addition to a patient, any practitioner, pharmacist, health facility, or private practitioner's office or clinic may request that information contained in KASPER be corrected if the practitioner, pharmacist, or facility believes any information is inaccurate; and Adds a new Section 10 which allows a designated class of employees, or a specific employee or employees of a health facility, including a private practitioner's office or clinic, to run KASPER reports. The new language of Section 10 also addresses auditing, educational, and procedural requirements for obtaining a KASPER account, as well as reporting requirements and applicable sanctions for individuals who intentionally misuse their privileges to KASPER data.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the passage of House Bill 1 from the 2012 Special Session.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing KASPER system requirements for monitoring Schedules II, III, IV, and V controlled substances that are dispensed in the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by demonstrating compliance with House Bill 1 from the 2012 Special Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts every practitioner and pharmacist in the Commonwealth required by state law to use the KASPER system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pursuant to KRS 218A.202(3) and effective July 1, 2013, dispensers will be required to report data to KASPER within one (1) day of the dispensing. Additionally, health facilities, including a private practitioner's office or clinic, may designate a class of employees, or a specific employee or employees in a health facility, to query KASPER on behalf of prescribers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by practitioners or pharmacies in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this amendment enhances the effectiveness of the KASPER system; includes an error resolution process by which patients, practitioners, pharmacists, health facilities, private practitioner's offices, and private clinics may request that information contained in KASPER be corrected if believed that any information is inaccurate; and allows health facilities, including a private practitioner's office or clinic, to

designate a class of employees, or a specific employee or employees in a health facility, to query KASPER on behalf of prescribers.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under the Hal Rodgers Prescription Drug Monitoring Program and proceeds from the National Mortgage Settlement.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts every practitioner and pharmacist in the Commonwealth who dispenses controlled substances.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.202, 218A.240, 218A.250

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenue generated for state or local government for the first year that this administrative regulation is in effect.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenue generated for state or local government during subsequent years after this administrative regulation becomes effective.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amended After Comments)

907 KAR 1:145. Supports for community living services for an individual with an intellectual or[~~mental retardation or a~~] developmental disability.

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 441 Subpart G, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[~~for the provision of medical assistance to Kentucky's indigent citizenry~~]. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer directed services program to provide an option for the home and community based services waivers. This administrative regulation establishes the **covered service policies and requirements[~~coverage provisions~~]** relating to home and community-based services provided to an individual with an intellectual or[~~mental retardation or a~~] developmental disability as an alternative to placement in an intermediate care facility for an individual with an intellectual or[~~mental retardation or a~~] developmental disability, including a consumer directed option pursuant to KRS 205.5606 **until individuals transition to receiving services via 907 KAR 12:010**. The policies **and requirements established in Section 4 of this administrative regulation** shall apply to supports for community living (SCL) waiver service providers who provide services and SCL waiver service recipients who receive services pursuant to this administrative regulation. A new SCL waiver program is being established pursuant to 907 KAR 12:010 which establishes service and coverage policies for SCL waiver recipients which become effective when the recipient transitions to the new SCL waiver during the month of the recipient's next birthday. Until an SCL waiver recipient transitions to the new SCL waiver program, the service and coverage policies established in **Section 4 of** this administrative regulation shall apply to the SCL waiver recipient and to any provider who provides SCL waiver services to the SCL waiver recipient. **Additionally, the consumer directed option policies and requirements established in Section 5 of this administrative regulation shall apply to individuals receiving consumer directed option services until the individuals transition to receiving services pursuant to 907 KAR 12:010 and to providers of consumer directed option services to individuals receiving consumer directed option services pursuant to this administrative regulation. The SCL recipient, eligibility, enrollment, and termination policies and requirements established in Section 2 of this administrative regulation shall also apply to individuals until individuals transition to applying for or receiving services pursuant to 907 KAR 12:010.**

Section 1. Definitions. (1) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:

(a) Completed on a MAP-351; and

(b) Submitted to the department:

1. For a level of care determination; and

2. Annually thereafter.

(2) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an SCL recipient.

(3) "Behavior support specialist" means an individual who has a master's degree from an accredited institution with formal graduate course work in a behavioral science and at least one (1) year of experience in behavioral programming.

(4) "Blended services" means a nonduplicative combination of SCL waiver services identified in Section 4 of this administrative regulation and CDO services identified in Section 5 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(5) "Budget allowance" is defined by KRS 205.5605(1).

(6) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS 319.053 or 319.056.

(7) "Consumer" is defined by KRS 205.5605(2).

(8) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community

based services waivers that allow recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(9) "Covered services and supports" is defined by KRS 205.5605(3).

(10) "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(11) "DCBS" means the Department for Community Based Services.

(12) **"DDID" means the Division of Developmental and Intellectual Disabilities in the Department for Behavioral Health, Developmental and Intellectual Disabilities.**

(13)[~~(11)~~] "Department" means the Department for Medicaid Services or its designee.

(14)[~~**(13)**~~][~~(12)~~] "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable to an intellectual disability as defined in this section or a condition related to an intellectual disability that results in:[~~mental retardation or related conditions that:~~]

1.[~~Result in~~] An impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability[~~mental retardation~~]; and

2. Are a direct result of, or are influenced by, the person's[~~substantial~~] cognitive deficits.

[~~(13) "DMHMR" means the Department for Mental Health and Mental Retardation Services.~~]

[~~(14) "DMR" means the Division of Mental Retardation in the Department for Behavioral Health, Developmental and Intellectual Disabilities~~][~~Mental Health and Mental Retardation Services~~]**[~~.~~]**

(15) "Electronic signature" is defined by KRS 369.102(8).

(16) "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, which includes:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed but is expected to be completed in two (2) weeks or less;

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period; or

(e) The individual is residing in a facility and is actively participating in a transition plan to community based services, the length of which is greater than sixty (60) days but less than one (1) year.

(17) "Human rights committee" means a group of individuals established to protect the rights and welfare of an SCL recipient.

(18) "**ICF-IID**[~~**"ICF-ID"**~~**]** means an intermediate care facility for an individual with an intellectual or developmental disability[~~"ICF-MR-DD" means an intermediate care facility for an individual with mental retardation or a developmental disability~~].

(19) "Intellectual disability" or "ID" means a demonstration:

(a)1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of approximately seventy (70) or below; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

a. Communication;

b. Self-care;

c. Home living;

d. Social or interpersonal skills;

e. Use of community resources;

f. Self-direction;

g. Functional academic skills;

h. Work;

i. Leisure; or

j. Health and safety; and

(b) Which occurred prior to the individual reaching eighteen (18) years of age.

(20) "Level of care determination" means a determination by the department that an individual meets low-intensity or high-intensity patient status criteria in accordance with 907 KAR 1:022.

(21)[~~(20)~~] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(22)[~~(21)~~] ''Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(23)[~~(22)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.[~~(23) "Mental retardation" means that a person has:~~

~~(a) Significantly sub-average intellectual functioning;~~

~~(b) An intelligence quotient of approximately seventy (70) or below;~~

~~(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:~~

~~1. Communication;~~

~~2. Self-care;~~

~~3. Home living;~~

~~4. Social or interpersonal skills;~~

~~5. Use of community resources;~~

~~6. Self-direction;~~

~~7. Functional academic skills;~~

~~8. Work;~~

~~9. Leisure; or~~

~~10. Health and safety; and~~

~~(d) Had an onset before eighteen (18) years of age.~~]

(24) "Occupational therapist" is defined by KRS 319A.010(3).

(25) "Occupational therapy assistant" is defined in KRS 319A.010(4).

(26) "Patient liability" means the financial amount an individual is required to contribute towards the cost of care in order to maintain Medicaid eligibility.

(27) "Physical therapist" is defined by KRS 27.010(2).

(28) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(29) "Plan of Care" or "POC" means a written individualized plan developed by:

(a) An SCL recipient or an SCL recipient's legal representative;

(b) The case manager or support broker; and

(c) Any other person designated by the SCL recipient if the SCL recipient designates any other person.

(30) "Psychologist" is defined by KRS 319.010(8).

(31) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(32) "Registered nurse" or "RN" means a person who is currently licensed as defined in KRS 314.011(5), and who has one (1) year or more experience as a professional nurse.

(33) "Representative" is defined in KRS 205.5605(6).

(34) "SCL intellectual disability[~~mental retardation~~] professional" or "SCL IDP"[~~"SCL MRP"~~] means an individual who has at least one (1) year of experience working with persons with intellectual[~~mental retardation~~] or developmental disabilities and:

(a) Is a doctor of medicine or osteopathy;

(b) Is a registered nurse; or

(c) Holds at least a bachelor's degree from an accredited institution in a human services field including sociology, special education, rehabilitation counseling, or psychology.

(35) "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

(36) "SCL recipient" means an individual who meets the criteria established in Section 2 of this administrative regulation.

(37) "Social worker" means an individual licensed by the Kentucky Board of Social Work under KRS 335.080, 335.090, or 335.100.

(38) "Speech-language pathologist" is defined by KRS 334A.020(3).

(39) "Support broker" means an individual designated by the department to:

(a) Provide training, technical assistance and support to a consumer; and

(b) Assist the consumer in any other aspects of CDO.

(40) "Support spending plan" means a plan for a consumer that identifies:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes; and

(g) Budget allowance.

(41) "Supports for community living" or "SCL" means home and community-based waiver services for an individual with an intellectual or[~~mental retardation or a~~] developmental disability.

Section 2. SCL Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the SCL program, an individual shall:

(a)**[~~Be placed on the SCL waiting list in accordance with Section 7 of this administrative regulation;~~**

~~(b)~~] Receive notification of potential SCL funding in accordance with Section 7 of this administrative regulation;

(b)[~~(c)~~] Meet **ICF-IID[~~ICF-MR-DD~~]** patient status requirements established in 907 KAR 1:022;

(c)[~~(d)~~] Meet Medicaid eligibility requirements established in 907 KAR 1:605;

(d)[~~(e)~~] Submit an application packet to the department which shall contain:

1. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350;

2. The MAP-351 Assessment Form;

3. The results of a physical examination that was conducted within the last twelve (12) months;

4. A MAP-10, statement of the need for long-term care services, which shall be signed and dated by a physician or an SCL MRP and be less than one (1) year old;

5. The results of a psychological examination completed by a licensed psychologist or psychologist with autonomous functioning;

6. A social case history which is less than one (1) year old;

7. A projection of the needed supports and a preliminary MAP-109 plan of care for meeting those needs;

8. A MAP-24C documenting an individual's status change; and

9. A copy of the letter notifying the SCL recipient of an SCL funding allocation; and

(f) Receive notification of an admission packet approval from the department.

(2) To maintain eligibility as an SCL recipient:

(a) An individual shall be administered an NC-SNAP assessment by the department in accordance with 907 KAR 1:155;

(b) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

(c) An **ICF-IID[~~ICF-MR-DD~~]** level of care determination shall be performed by the department at least once every twelve (12) months.

(3) An SCL waiver service shall not be provided to an SCL recipient who is receiving a service in another Medicaid waiver program or is an inpatient of an **ICF-IID[~~ICF-MR-DD~~]** or other facility.

(4) **[~~The department may exclude from receiving an SCL waiver service an individual for whom the aggregate cost of SCL waiver services would reasonably be expected to exceed the cost of ICF-MR-DD services.~~**

~~(5)~~] Involuntary termination and loss of an SCL waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to access an SCL waiver service within sixty (60) days of notification of potential funding without good cause shown.

1. The individual or legal representative shall have the burden of documenting good cause, including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers;

c. Copies of letters from providers; and

d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; or

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;

(b) An SCL recipient or legal representative fails to access the required service as outlined in the plan of care for a period greater than sixty (60) consecutive days without good cause shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers;

c. Copies of letters from providers; and

d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; and

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;

(c) An SCL recipient changes residence outside the Commonwealth of Kentucky; or

(d) An SCL recipient does not meet **ICF-IID[~~ICF-MR-DD~~]** patient status criteria.

(6) Involuntary termination of a service to an SCL recipient by an SCL provider shall require:

(a) Simultaneous notice to the SCL recipient or legal representative, the case manager or support broker, the department, and **DDID[~~DMR~~]** at least thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The SCL recipient's right to appeal the intended action through the provider's appeal or grievance process;

(b) Submittal of a MAP-24C to the department and to **DDID[~~DMR~~]** at the time of the intended action; and

(c) The case manager or support broker in conjunction with the provider to:

1. Provide the SCL recipient with the name, address, and telephone number of each current SCL provider in the state;

2. Provide assistance to the SCL recipient in making contact with another SCL provider;

3. Arrange transportation for a requested visit to an SCL provider site;

4. Provide a copy of pertinent information to the SCL recipient or legal representative;

5. Ensure the health, safety and welfare of the SCL recipient until an appropriate placement is secured;

6. Continue to provide supports until alternative services or another placement is secured; and

7. Provide assistance to ensure a safe and effective service transition.

(7) Voluntary termination and loss of an SCL waiver program placement shall be initiated if an SCL recipient or legal representative submits a written notice of intent to discontinue services to the service provider, to the department and to **DDID[~~DMR~~]**.

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The SCL recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 3. Non-CDO Provider Participation. **The SCL waiver service provider policies and requirements established in 907 KAR 12:010 shall apply to all SCL waiver service providers.[~~(1) In order to provide a non-CDO SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL~~**

provider shall:

(a) Be certified by the department prior to the initiation of the service;

(b) Be recertified at least annually by the department; and

(c) Have a main office within the Commonwealth of Kentucky.

(2) An SCL provider shall comply with 907 KAR 1:671, 907 KAR 1:672, 907 KAR 1:673 and 902 KAR 20:078.

(3) An SCL provider shall have a governing body that shall:

(a) Be a legally constituted entity within the Commonwealth of Kentucky;

(b) Not contain a majority of owners;

(c) Be responsible for the overall operation of the organization that shall include:

1. Establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an SCL recipient supported by the agency;

2. Appointing and annually evaluating the executive director;

3. Delegating the authority and responsibility for the management of the affairs of the agency in accordance with written policy and procedures that comply with this administrative regulation;

4. Meeting as a whole at least quarterly to fulfill its ongoing responsibility and maintaining a record of the discharge of its duties; and

5. Orienting a new member of the governing body to the operation of the organization, including the roles and responsibilities of board members.

(4) An SCL provider shall:

(a) Ensure that an SCL waiver service is not provided to an SCL recipient by a staff member of the SCL provider who has one (1) of the following blood relationships to the SCL recipient:

1. Child;

2. Parent;

3. Sibling; or

4. Spouse;

(b) Not enroll an SCL recipient for whom they cannot meet the support needs;

(c) Have and follow written criteria that comply with this administrative regulation for determining the eligibility of an individual for admission to services; and

(d) Document any denial for a service and the reason for the denial, and identify resources necessary to successfully support the denied SCL recipient in the community.

(5) An SCL provider shall maintain documentation of its operations which shall include:

(a) An annual review of written policy and procedures;

(b) A written description of available SCL waiver services;

(c) A current table of organization;

(d) A memorandum of understanding with an SCL case management provider with whom they share plans of care;

(e) Information regarding satisfaction of an SCL recipient and the utilization of that information;

(f) A quality improvement program; and

(g) Documentation of achievement of outcomes based on best practice standards as approved by the department.

(6) An SCL provider shall:

(a) Maintain accurate fiscal information which shall include documentation of revenue and expenses;

(b) Maintain a written schedule of policy relevant to rates and charges that shall be available to any individual upon request;

(c) Meet the following requirements if responsible for the management of SCL recipient funds:

1. Separate accounting shall be maintained for each SCL recipient or for his or her interest in a common trust or special account;

2. Account balance and records of transactions shall be provided to the SCL recipient or legal representative on a quarterly basis; and

3. The SCL recipient or legal representative shall be notified if a large balance is accrued that may affect Medicaid eligibility.

(7) An SCL provider shall have a written statement of its mission and values, which shall:

(a) Support empowerment and informed decision-making;

(b) Support and assist people to remain connected to natural support networks; and

(c) Promote dignity and self-worth.

(8) An SCL provider shall have written policy and procedures for communication and interaction with a family and legal representative of an SCL recipient which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction by direct care staff;

(c) Require prompt notification of any unusual occurrence;

(d) Require visitation to the SCL recipient at a reasonable time, without prior notice and with due regard for the SCL recipient's right of privacy;

(e) Require involvement in decision making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language and socioeconomic characteristics of the family being supported.

(9) An SCL provider shall ensure the rights of an SCL recipient by:

(a) Making available a description of the rights and the means by which they can be exercised and supported which shall include:

1. The right to time, space, and opportunity for personal privacy;

2. The right to communicate, associate and meet privately with the person of choice;

3. The right to send and receive unopened mail;

4. The right to retain and use personal possessions including clothing and grooming articles; and

5. The right to private, accessible use of the telephone;

(b) Having a grievance and appeals system that includes an external mechanism for review of complaints; and

(c) Complying with the Americans with Disabilities Act (28 C.F.R. 35).

(10)(a) An SCL provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that:

1. A covered service is provided; or

2. The recipient turns twenty-one (21), if the recipient is under the age of twenty-one (21);

(b) All records and incident reports shall be made available to the:

1. department;

2.**DBHDID**][DMHMR]**[or its designee;**

3. Cabinet for Health and Family Services, Office of Inspector General or its designee;

4. General Accounting Office or its designee;

5. Office of the Auditor of Public Accounts or its designee;

6. Office of the Attorney General or its designee;

7. DCBS; or

8. Centers for Medicare and Medicaid Services.

(11) An SCL provider shall cooperate with monitoring visits from monitoring agents.

(12) An SCL provider shall maintain a record for each SCL recipient served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through each error that is initialed and dated; and

(d) Contain no blank lines in between each entry.

(13) A record of each SCL recipient who is served shall:

(a) Contain all information necessary for the delivery of the SCL recipient's services;

(b) Be cumulative;

(c) Be readily available;

(d) Contain documentation which meets the requirements of Section 4 of this administrative regulation;

(e) Contain the following specific information:

~~1. The SCL recipient's name, Social Security number and Medicaid identification number (MAID);~~

~~2. The intake or face sheet;~~

~~3. The MAP-351 Assessment form completed at least annually;~~

~~4. The current plan of care;~~

~~5. The training objective for any support which facilitates achievement of the SCL recipient's chosen outcomes;~~

~~6. A list containing emergency contact telephone numbers;~~

~~7. The SCL recipient's history of allergies with appropriate allergy alerts for severe allergies;~~

~~8. The SCL recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;~~

~~9. A recognizable photograph of the SCL recipient;~~

~~10. Legally-adequate consent, updated annually, and a copy of which is located at each service site for the provision of services or other treatment requiring emergency attention;~~

~~11. The individual educational plan (IEP) or individual family service plan (IFSP), if applicable;~~

~~12. The SCL recipient's social history updated at least annually;~~

~~13. The results of an annual physical exam;~~

~~14. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350 updated annually;~~

~~15. Psychological evaluation;~~

~~16. Current level of care certification; and~~

~~17. The MAP-552K, Department for Community Based Services Notice of Availability for Long Term Care/Waiver Agency/Hospice Form in the case management and residential record;~~

~~(f) Be maintained by the provider in a manner to ensure the confidentiality of the SCL recipient's record and other personal information and to allow the SCL recipient or legal representative to determine when to share the information as provided by law;~~

~~(g) Have the safety from loss, destruction or use by an unauthorized person ensured by the provider;~~

~~(h) Be available to the SCL recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record; and~~

~~(i) Have a corresponding legend which the provider shall make readily accessible.~~

~~(14) An SCL provider shall:~~

~~(a)1. Ensure that each new staff or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider within seven (7) days of the date of hire or date the individual began serving as a volunteer;~~

~~2. For existing staff, maintain documentation of each staff person's or if a volunteer performs direct care or a supervisory function, the volunteer's annual TB risk assessment or negative tuberculosis test;~~

~~3.a. Ensure that an employee or volunteer who tests positive for TB or has a history of positive TB skin test shall be assessed annually by a licensed medical professional for signs or symptoms of active disease; and~~

~~b. If it is determined that signs or symptoms of active disease are present, in order for the person to be allowed to work or volunteer he or she shall be administered follow-up testing by his or her physician with the testing indicating the person does not have active TB disease; and~~

~~4. Maintain annual documentation for an employee or volunteer with a positive TB test to ensure no active disease symptoms are present;~~

~~(b) Have written personnel guidelines for each employee to include:~~

~~1. Salary range;~~

~~2. Vacation and leave procedures;~~

~~3. Health insurance;~~

~~4. Retirement benefits;~~

~~5. Opportunity for continuing education; and~~

~~6. Grievance procedures;~~

~~(c) Provide a written job description for each staff person which describes the employee's duties and responsibilities;~~

~~(d) Annually review each job description;~~

~~(e) For each potential employee obtain:~~

~~1. Prior to employment, the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment;~~

~~2. Within thirty (30) days of the date of hire, the results of a central registry check as described in 922 KAR 1:470; and~~

~~3. Prior to employment, the results of a nurse aide abuse registry check as described in 906 KAR 1:100;~~

~~(f) Annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment;~~

~~(g) For a volunteer expected to perform direct care or a supervisory function obtain:~~

~~1. Prior to the date the individual began serving as a volunteer, the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to volunteering;~~

~~2. Within thirty (30) days of the date of service as a volunteer, the results of a central registry check as described in 922 KAR 1:470; and~~

~~3. Prior to the date the individual began serving as a volunteer, the results of a nurse aide abuse registry check as described in 906 KAR 1:100;~~

~~(h) Annually, for twenty-five (25) percent of volunteers randomly selected, performing direct care staff or a supervisory function, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to volunteering;~~

~~(i) Not employ or place an individual as a volunteer who:~~

~~1. Has a prior conviction of an offense delineated in KRS 17.165(1) through (3);~~

~~2. Has a prior felony conviction;~~

~~3. Has a conviction of abuse or sale of illegal drugs during the past five (5) years;~~

~~4. Has a conviction of abuse, neglect or exploitation;~~

~~5. Has a Cabinet for Health and Family Services finding of child abuse or neglect pursuant to the central registry; or~~

~~6. Is listed on the nurse aide abuse registry;~~

~~(j) Not permit an employee or volunteer to transport an SCL recipient if the individual has a driving under the influence (DUI) conviction during the past year; and~~

~~(k) Evaluate the performance and competency of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter.~~

~~(15) An SCL provider shall have:~~

~~(a) An executive director who:~~

~~1.a. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; or~~

~~b. Is a registered nurse; and~~

~~2. Has a minimum of one (1) year of administrative responsibility in an organization which served individuals with~~ an intellectual or][~~mental retardation or a~~]**[developmental disability;**

~~(b) A program director of the SCL waiver program who:~~

~~1. Has a minimum of one (1) year of previous supervisory responsibility in an organization which served individuals with~~ intellectual][~~mental retardation~~]**[or developmental disabilities;**

~~2. Is an SCL MRP; and~~

3. May serve as executive director if the requirements established in paragraph (a) of this subsection of this administrative regulation are met;

(c) Adequate direct-contact staff who:

1.a.(i) Is eighteen (18) years or older; and

(ii) Has a high school diploma or GED; or

b.(i) Is at least twenty-one (21) years old; and

(ii) Is able to adequately communicate with recipients and staff;

2. Has a valid Social Security number or valid work permit if not a U.S. citizen;

3. Can understand and carry out instructions; and

4. Has ability to keep simple records; and

(d) Adequate supervisory staff who:

1.a.(i) Is eighteen (18) years or older; and

(ii) Has a high school diploma or GED; or

b.(i) Is at least twenty-one (21) years old; and

(ii) Has a minimum of one (1) year experience in providing services to individuals with **an intellectual**][mental retardation][or developmental disability;

2. Is able to adequately communicate with the recipients, staff, and family members;

3. Has a valid Social Security number or valid work permit if not a U.S. citizen; and

4. Has ability to perform required record keeping.

(16) An SCL provider shall establish written guidelines that address the health, safety and welfare of an SCL recipient, which shall include:

(a) Ensuring the health, safety and welfare of the SCL recipient;

(b) Maintenance of sanitary conditions;

(c) Ensuring each site operated by the provider is equipped with:

1. An operational smoke detector placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations; one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(d) Ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by an SCL recipient not exceeding 120 degrees Fahrenheit;

(e) Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080 which shall ensure:

1. Safe storage and use; and

2. That firearms and ammunition are permitted:

a. Only in a family home provider or an adult foster care home; and

b. Only if stored separately and under double lock;

(f) Establishing written procedures concerning the safe storage of common household items;

(g) Ensuring that the nutritional needs of an SCL recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(h) Ensuring that staff administering medication:

1. Unless the employee is a licensed or registered nurse, have specific training provided by a licensed medical professional per a DMR-approved curriculum and documented competency on medication administration, medication cause and effect and proper administration and storage of medication; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication and dosage and accompany and be administered to an SCL recipient at a program site other than his or her residence if necessary; and

d. Be documented on a medication administration form and properly disposed of, if discontinued; and

(i) Policy and procedures for ongoing monitoring of medication administration.

(17) An SCL provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include instruction for notification procedures and the use of alarm and signal systems to alert an SCL recipient according to his or her disability;

(c) Include an evacuation drill to be conducted in three (3) minutes or less, documented at least quarterly and scheduled to include a time when an SCL recipient is asleep; and

(d) Mandate that the result of an evacuation drill be evaluated and modified as needed.

(18) An SCL provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization, and practice of the agency;

(b) Provide or arrange for the provision of competency-based training to each employee to teach and enhance skills related to the performance of their duties;

(c) Require documentation of all training which shall include:

1. The type of training provided:

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(d) Ensure that each employee prior to independent functioning, completes training which shall include:

1. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

2. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

3. Crisis prevention and management;

4. Identification and prevention of abuse, neglect, and exploitation;

5. Rights of individuals with disabilities; and

6. Individualized instruction on the needs of the SCL recipient to whom the trainee provides supports;

(e) Ensure that each employee that will be administering medications, prior to independent functioning, completes training which shall include:

1. Medication administration training per cabinet-approved curriculum;

2. Medications and seizures;

3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

4. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

5. Crisis prevention and management;

6. Identification and prevention of abuse, neglect, and exploitation;

7. Rights of individuals with disabilities; and

8. Individualized instruction on the needs of the SCL recipient to whom the trainee provides supports;

(f) Ensure that all employees complete core training, consistent with a **DBHDID-approved**][DMHMR-approved][curriculum, no later than six (6) months from the date of employment, which shall include:

1. Values, attitudes, and stereotypes;

2. Building community inclusion;

3. Person-centered planning;

4. Positive behavior support;

5. Human sexuality and persons with disabilities;

6. Self determination; and

7. Strategies for successful teaching;

(g) Not be required to receive the training specified in this

~~section if the provider is:~~

~~1. An occupational therapist providing occupational therapy;~~

~~2. A physical therapist providing physical therapy;~~

~~3. A psychologist or psychologist with autonomous functioning providing psychological services; or~~

~~4. A speech-language pathologist providing speech therapy;~~

~~(h) Ensure that an individual volunteer performing a direct care staff or a supervisory function receives training prior to working independently, which shall include:~~

~~1. Orientation to the agency;~~

~~2. Individualized instruction on the needs of the SCL recipient to whom the volunteer provides support;~~

~~3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and~~

~~4. Cardiopulmonary resuscitation, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and~~

~~(i) Ensure that each new case manager hired complete DMR-approved case management training within The first six (6) months from the date of hire.~~**]**

Section 4. Non-CDO Covered Services. (1) A non-CDO SCL waiver service shall:

(a) Be prior authorized by the department; and

(b) Be provided pursuant to the plan of care.

(2) The following services provided to an SCL recipient by an SCL waiver provider shall be covered by the department:

(a) Adult day training which shall:

1. Support the SCL recipient to participate in daily meaningful routines in the community;

2. Stress training in:

a. The activities of daily living;

b. Self-advocacy;

c. Adaptive and social skills; and

d. Vocational skills;

3. Be provided in a nonresidential or community setting that may;

a. Be a fixed location; or

b. Occur in public venues.

4. Not be diversional in nature;

5. Be provided as on-site services which shall:

a. Include facility-based services provided on a regularly-scheduled basis;

b. Lead to the acquisition of skills and abilities to prepare the participant for work or community participation; or

c. Prepare the participant for transition from school to work or adult support services;

6. Be provided as off-site services which:

a. Shall include services provided in a variety of community settings;

b. Shall provide access to community-based activities that cannot be provided by natural or other unpaid supports;

c. Shall be designed to result in increased ability to access community resources without paid supports;

d. Shall provide the opportunity for the participant to be involved with other members of the general population;

e. May be provided as an enclave or group approach to training in which participants work as a group or dispersed individually throughout an integrated work setting with people without disabilities;

f. May be provided as a mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; and

g. May be provided as entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;

7. Ensure that any recipient performing productive work that benefits the organization be paid commensurate with compensation to members of the general work force doing similar work;

8. Require that a provider conduct an orientation informing the recipient of supported employment and other competitive opportunities in the community at least annually;

9. Be provided at a time mutually agreed to by the recipient and provider;

10.a. Be provided to recipients age twenty-two (22) or older; or

b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services;

11. Be documented by:

a. A time and attendance record which shall include**:**

(i) The date of the service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly summary staff note which shall include:

(i) The month, day, and year for the time period covered by each note written;

(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of individual preparing the summary staff note;

12. Be limited to five (5) days per week, 255 days maximum per year;

13. Not exceed eight (8) hours per day, five (5) days per week; and

14. Not exceed sixteen (16) hours per day if provided in combination with community living supports or supported employment;

(b) An assessment service including a comprehensive assessment which shall:

1. Identify an SCL recipient's needs and the services that the SCL recipient or his or her family cannot manage or arrange for on his or her behalf;

2. Evaluate an SCL recipient's physical health, mental health, social supports, and environment;

3. Be requested by an individual requesting SCL services or a family or legal representative of the individual;

4. Be conducted within seven (7) calendar days of receipt of the request for assessment;

5. Include at least one (1) face-to-face contact with the SCL recipient and, if appropriate, his or her family by the assessor in the SCL recipient's home; and

6. Not be reimbursable if the individual does not receive a level of care certification;

(c) A reassessment service which shall:

1. Determine the continuing need for SCL waiver services;

2. Be performed at least every twelve (12) months;

3. Be conducted using the same procedures as for an assessment service;

4. Be conducted by a SCL case manager or support broker and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;

5. Not be reimbursable if conducted during a period that the SCL recipient is not covered by a valid level of care certification; and

6. Not be retroactive;

(d) Behavioral support which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Be provided to assist the SCL recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;

3. Include a functional assessment of the SCL recipient's behavior which shall include:

a. An analysis of the potential communicative intent of the behavior;

b. The history of reinforcement for the behavior;

c. Critical variables that preceded the behavior;

d. Effects of different situations on the behavior; and

e. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

4. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Be implemented by SCL provider staff in all relevant environments and activities;

c. Be revised as necessary;

d. Define the techniques and procedures used;

e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;

f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

g. Reflect the use of positive approaches; and

h. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

5. Include the provision of training to other SCL providers concerning implementation of the behavioral support plan;

6. Include the monitoring of an SCL recipient's progress which shall be accomplished through:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. The reports of an SCL provider involved in implementing the behavioral support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist who shall have:

a. A master's degree with formal graduate course work in a behavioral science; and

b. One (1) year of experience in behavioral programming;

9. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

c. The signature, date of signature and title of the behavioral specialist; and

10. Be limited to ten (10) hours for an initial functional assessment and six (6) hours for the initial development of the behavior support plan and staff training;

(e) Case management which shall include:

1. Initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility process;

2. Assisting an SCL recipient in the identification, coordination, and arrangement of the support team and support team meetings;

3. Assisting an SCL recipient and the support team to develop, update, and monitor the plan of care which shall:

a. Be initially developed within thirty (30) days of the initiation of the service using person-centered guiding principles;

b. Be updated at least annually or as changes occur;

c. Be submitted on the MAP-351; and

d. Include any modification to the plan of care and be sent to the department within fourteen (14) days of the effective date that the change occurs with the SCL recipient;

4. Assisting an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information;

5. Furnishing an SCL recipient and legal representative with a listing of each available SCL provider in the service area;

6. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and of any change to the selection of an SCL provider and the reason for the change;

7. Timely distribution of the plan of care, crisis prevention plan, assessment, and other documents to chosen SCL service providers;

8. Providing an SCL recipient and chosen SCL providers twenty-four (24) hour telephone access to a case management staff person;

9. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be:

a. Individual-specific;

b. Annually reviewed; and

c. Updated as a change occurs;

10. Assisting an SCL recipient in planning resource use and assuring protection of resources;

11. Services that are exclusive of the provision of a direct service to an SCL recipient;

12. Monthly face-to-face contact with an SCL recipient;

13. Monitoring the health, safety, and welfare of an SCL recipient;

14. Monitoring all of the supports provided to an SCL recipient;

15. Notifying the local DCBS office, the department and DMR on a MAP-24C form if an SCL recipient is:

a. Terminated from the SCL Waiver Program;

b. Admitted to an **ICF-IID**[~~ICF-MR-DD~~];

c. Admitted to a hospital;

d. Transferred to another Medicaid Waiver Program; or

e. Moved to another SCL residence;

16. Establishing a human rights committee which shall:

a. Include an:

(i) SCL recipient;

(ii) Individual not affiliated with the SCL provider; and

(iii) Individual who has knowledge and experience in rights issues;

b. Review and approve, prior to implementation and at least annually thereafter, all plans of care with rights restrictions;

c. Review and approve prior to implementation and at least annually thereafter, in conjunction with the SCL recipient's team, behavior support plans that include highly-restrictive procedures or contain rights restrictions; and

d. Review the use of a psychotropic medication by an SCL recipient without an Axis I diagnosis;

17. Establishing a behavior intervention committee which shall:

a. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior support plan;

b. Be separate from the human rights committee;

c. Review and approve prior to implementation and at least annually thereafter or as changes are needed, in conjunction with the SCL recipient's team, all behavior support plans; and

d. Review the use of a psychotropic medication by an SCL recipient without an Axis I diagnosis and recommend an alternative intervention if appropriate;

18. Documentation with a monthly summary note which shall include:

a. Documentation of monthly contact with each chosen SCL provider which shall include monitoring of the delivery of services and the effectiveness of the plan of care;

b. Documentation of monthly face-to-face contact with an SCL recipient; and

c. Progress towards outcomes identified in the plan of care;

19. Provision by a case manager who shall:

a. Have a bachelor's degree from an accredited institution in a human services field;

b. Be a registered nurse;

c. Be a qualified social worker;

d. Be a licensed marriage and family therapist;

e. Be a professional clinical counselor;

f. Be a certified psychologist; or

g. Be a licensed psychological practitioner;

20. Supervision by a case management supervisor who shall be an SCL MRP; and

21. Documentation with a detailed monthly summary note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(f) Children's day habilitation which shall be:

1. The provision of support, training, and intervention in the areas of:

a. Self-care;

b. Sensory/motor development;

c. Daily living skills;

d. Communication; and

e. Adaptive and social skills;

2. Provided in a nonresidential or community setting;

3. Provided to enable the recipient to participate in and access

community resources;

4. Provided to help remove or diminish common barriers to participation in typical roles in community life;

5. Provided at a time mutually agreed upon by the recipient and provider;

6. Limited to:

a. Individuals who are in school and up to sixteen (16) years of age;

b. Up to eight (8) hours per day, five (5) days per week; and

c. Up to sixteen (16) hours per day in combination with community living supports; and

7. Documented by:

a. A time and attendance record which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly staff note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, or maintenance of outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the summary staff note;

(g) Community living supports which shall:

1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his or her own home or in his or her family's home;

2. Be supports and assistance which shall be related to chosen outcomes and not be diversional in nature. This may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

i. Leisure choices;

j. Participation in community activities;

k. Therapeutic goals; or

l. Nonmedical care not requiring nurse or physician intervention;

3. Not replace other work or day activities;

4. Be provided on a one-on-basis;

5. Not be provided at an adult day-training or children's day-habilitation site;

6. Be documented by:

a. A time and attendance record which shall include:

(i) The date of the service;

(ii) The beginning and ending time of the service; and

(iii) The signature, date of signature and title of the individual providing the service; and

b. A detailed monthly summary note which shall include:

(i) The month, day and year for the time period each note covers;

(ii) Progression, regression and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature and title of the individual preparing the summary note; and

7. Be limited to sixteen (16) hours per day alone or in combination with adult day training, children's day habilitation, and supported employment;

(h) Occupational therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician ordered services in a specified amount and duration to guide an SCL recipient in the use of therapeutic, creative, and self-care activities to assist an SCL recipient in obtaining the highest possible level of functioning;

3. Training of other SCL providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and

6. Documented by a detailed staff note which shall include:

a. Progress toward outcomes identified in the plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature, date of signature and title of the individual providing the service;

(i) Physical therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient by applying muscle, joint, and functional ability tests;

2. Physician-ordered treatment in a specified amount and duration to assist an SCL recipient in obtaining the highest possible level of functioning;

3. Training of another SCL provider on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and

6. Documented by a detailed staff note which shall include:

a. Progress made toward outcomes identified in the plan of care;

b. The date of the service;

c. Beginning and ending time of the service; and

d. The signature, date of signature and title of the individual providing the service;

(j) Psychological services which shall:

1. Be provided to an SCL recipient who is dually diagnosed to coordinate treatment for mental illness and a psychological condition;

2. Be utilized if the needs of the SCL recipient cannot be met by behavior support or another covered service;

3. Include:

a. The administration of psychological testing;

b. Evaluation;

c. Diagnosis; and

d. Treatment;

4. Be incorporated into the plan of care with input from the psychological service provider for the development of program-wide support;

5. Be provided by a psychologist or a psychologist with autonomous functioning; and

6. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time of the service; and

c. The signature, date of signature and title of the individual providing the service;

(k) Residential support service which shall:

1. Include twenty-four (24) hour supervision in:

a. A staffed residence which shall not have greater than three (3) recipients of publicly-funded supports in a home rented or owned by the SCL provider;

b. A group home which shall be licensed in accordance with 902 KAR 20:078 and shall not have greater than eight (8) SCL recipients;

c. A family home provider which shall not have greater than three (3) recipients of publicly-funded supports living in the home; or

d. An adult foster care home which shall not have greater than three (3) recipients of publicly-funded supports aged eighteen (18) or over living in the home;

2. Utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in the event of an emergency;

3. Not utilize a motor home;

4. Provide a sleeping room which ensures that an SCL recipient:

a. Does not share a room with an individual of the opposite sex who is not the SCL recipient's spouse;

b. Under the age of eighteen (18) does not share a room with

an individual that has an age variance of more than five (5) years;

c. Does not share a room with an individual who presents a potential threat; and

d. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the SCL recipient's health and comfort;

5. Provide assistance with daily living skills which shall include:

a. Ambulation;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning and preparation;

h. Laundry;

i. Budgeting and financial matters;

j. Home care and cleaning; or

k. Medication management;

6. Provide supports and training to obtain the outcomes of the SCL recipient as identified in the plan of care;

7. Provide or arrange for transportation to services, activities, and medical appointments as needed;

8. Include participation in medical appointments and follow-up care as directed by the medical staff; and

9. Be documented by a detailed monthly summary note which shall include:

a. The month, day, and year for the time period the note covers;

b. Progression, regression and maintenance toward outcomes identified in the plan of care;

c. Pertinent information regarding the life of the SCL recipient; and

d. The signature, date of signature, and title of the individual preparing the staff note;

(l) Respite service which shall be:

1. Provided only to an SCL recipient unable to independently administer self-care;

2. Provided in a variety of settings;

3. Provided on a short-term basis due to absence or need for relief of an individual providing care to an SCL recipient;

4. Provided only to an SCL recipient who resides in a family home provider, adult foster care home, or his or her own or family's home;

5. Limited to 1,440 hours per calendar year; and

6. Documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

c. The signature, date of signature and title of the individual providing the service;

(m) Specialized medical equipment and supplies which shall:

1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;

2. Enable an SCL recipient to increase his or her ability to perform daily living activities or to perceive, control or communicate with the environment;

3. Be ordered by a physician and submitted on a MAP-95;

4. Include equipment necessary to the proper functioning of specialized items;

5. Not be available through the department's durable medical equipment, vision, hearing, or dental programs;

6. Meet applicable standards of manufacture, design and installation; and

7. Exclude those items which are not of direct medical or remedial benefit to the SCL recipient;

(n) Speech therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient with a speech or language disorder;

2. A physician ordered habilitative service in a specified amount and duration to assist an SCL recipient with a speech and language disability in obtaining the highest possible level of functioning;

3. Training of other SCL providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Be provided by a speech-language pathologist; and

6. Documented by a detailed staff note which shall include:

a. Progress toward outcomes identified in the plan of care;

b. The date of the service;

c. The beginning and ending time; and

d. The signature, date of signature and title of the individual providing the service; or

(o) Supported employment which shall be:

1. Intensive, ongoing support for an SCL recipient to maintain paid employment in an environment in which an individual without a disability is employed;

2. Provided in a variety of settings;

3. Provided on a one-to-one basis;

4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Subtitle B, Chapter III), proof of which shall be documented in the SCL recipient's file;

5. Exclusive of work performed directly for the supported employment provider;

6. Provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;

7. Documented by:

a. A time and attendance record with shall include:

(i) The date of service;

(ii) The beginning and ending time; and

(iii) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period the note covers;

(ii) Progression, regression and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature and title of the individual preparing the note; and

8. Limited to forty (40) hours per week alone or in combination with adult day training.

Section 5. Consumer Directed Option. (1) Covered services and supports provided to an SCL recipient participating in CDO shall include:

(a) A home and community support service which shall:

1. Be available only under the consumer directed option;

2. Be provided in the consumer's home or in the community;

3. Be based upon therapeutic goals and not be diversional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services; and

5.a. Be respite for the primary caregiver; or

b. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:

(i) Routine household tasks and maintenance;

(ii) Activities of daily living;

(iii) Personal hygiene;

(iv) Shopping;

(v) Money management;

(vi) Medication management;

(vii) Socialization;

(viii) Relationship building;

(ix) Leisure choices; or

(x) Participation in community activities;

(b) A community day support service which shall:

1. Be available only under the consumer directed option;

2. Be provided in a community setting;

3. Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for work or community activities, socialization, leisure or retirement activities;

4. Be based upon therapeutic goals and not be diversional in nature; and

5. Not be provided to an individual if the same or similar ser-

vice is being provided to the individual via non-CDO SCL services.

(c) Goods or services which shall:

1. Be individualized;

2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;

3. Not include experimental goods or services; and

4. Not include chemical or physical restraints.

(2) To be covered, a CDO service shall be specified in a consumer's plan of care and support spending plan.

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-CDO SCL setting.

(4) A consumer, including a married consumer, shall choose providers and a consumer's choice of CDO provider shall be documented in the consumer's plan of care.

(5) A consumer may designate a representative to act on his or her behalf. The CDO representative shall:

(a) Be twenty-one (21) years of age or older;

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP-2000 form.

(6) A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if imminent danger to the consumer's health, safety, or welfare exists.

(8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.

(9) Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the SCL assessment or reassessment service provider of potential termination;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan or designate a CDO representative;

(d) Complete, and submit to the department and to DMR, a MAP-2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional SCL services.

(10) Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Inform the consumer of the right to appeal the department's decision in accordance with Section 9 of this administrative regulation.

(11) A CDO provider:

(a) Shall be selected by the consumer;

(b) Shall submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Shall be eighteen (18) years of age or older;

(d) Shall be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a US citizen;

(e) Shall be able to communicate effectively with the consumer, consumer representative or family;

(f) Shall be able to understand and carry out instructions;

(g) Shall be able to keep records as required by the consumer;

(h) Shall submit to a criminal background check conducted by the Kentucky Administrative Office of the Courts or equivalent agency from any other state, for each state in which the individual resided or worked during the year prior to selection as a provider of CDO services;

(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry;

1. A consumer may employ a provider prior to a central registry check result being obtained for up to thirty (30) days; and

2. If a consumer does not obtain a central registry check result within thirty (30) days of employing a provider, the consumer shall cease employment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) Shall be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(13)(a) The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of SCL recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department may adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services; and

3. Protection of the consumer's health, safety, and welfare

(f) A consumer's budget shall not exceed the average per capita cost of services provided to individuals in an **ICF-IID**[~~ICF-MR-DD~~].

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(15) A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(16) For a CDO participant, a support broker may conduct an assessment or reassessment.

Section 6. Incident Reporting Process. **The incident report policies and requirements established in 907 KAR 12:010 shall apply to all SCL waiver service providers and participants.**[~~(1) An incident shall be documented on an incident report form.~~

~~(2) There shall be three (3) classes of incidents including:~~

~~(a) A class I incident which shall:~~

~~1. Be minor in nature and not create a serious consequence;~~

~~2. Not require an investigation by the provider agency;~~

~~3. Be reported to the case manager or support broker within twenty-four (24) hours;~~

~~4. Be reported to the guardian as directed by the guardian; and~~

~~5. Be retained on file at the provider and case management or support brokerage agency;~~

~~(b) A class II incident which shall:~~

~~1. Be serious in nature;~~

~~2. Involve the use of physical or chemical restraint;~~

~~3. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery, and shall involve the case manager or support broker; and~~

~~4. Be reported by the provider agency to:~~

~~a. The case manager or support broker within twenty-four (24) hours of discovery;~~

~~b. The guardian within twenty-four (24) hours of discovery;~~

~~c. The assistant director of the Division of Mental Retardation, **DBHDID**][DMHMR][, or designee, within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and~~

~~(c) A class III incident which shall:~~

~~1.a. Be grave in nature;~~

~~b. Involve suspected abuse, neglect, or exploitation;~~

~~c. Involve a medication error which requires a medical intervention; or~~

~~d. Be a death;~~

~~2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and~~

~~3. Be reported by the provider agency to:~~

~~a. The case manager or support broker within eight (8) hours of discovery;~~

~~b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;~~

~~c. The guardian within eight (8) hours of discovery; and~~

~~d. The assistant director of the Division of Mental Retardation, **DBHDID**][DMHMR][, or designee, within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. EST on a weekday, or occurs on a weekend or holiday, notification to DMR shall occur on the following business day.~~

~~(3) The following documentation with a complete written report shall be submitted for a death:~~

~~(a) A current plan of care;~~

~~(b) A current list of prescribed medications including PRN medications;~~

~~(c) A current crisis plan;~~

~~(d) Medication Administration Review (MAR) forms for the current and previous month;~~

~~(e) Staff notes from the current and previous month including details of physician and emergency room visits;~~

~~(f) Any additional information requested by **DBHDID**][DMHMR][;~~

~~(g) A coroner's report when received; and~~

~~(h) If performed, an autopsy report when received.~~

~~(4) All medication errors shall be reported to the Assistant Director of the Division of Mental Retardation, **DBHDID**][DMHMR][, or designee on a monthly medication error report form by the 15th of the following month.]~~

Section 7. SCL Waiting List. **The SCL waiting list policies and requirements established in 907 KAR 12:010 shall apply to all individuals on the SCL waiting list or attempting to be placed on the SCL waiting list.**[~~(1) An individual applying for SCL waiver services shall be placed on a statewide waiting list which shall be maintained by the department.~~

~~(2) An individual shall be placed on the SCL waiting list based upon his or her region of origin in accordance with KRS 205.6317(3) and (4).~~

~~(3) In order to be placed on the SCL waiting list, an individual shall submit to the department a completed MAP-620, Application for MR-DD Services, which shall include the following:~~

~~(a) A signature from a physician or an SCL MRP indicating medical necessity;~~

~~(b) A current and valid MR/DD diagnosis, including supporting documentation to validate the diagnosis; and~~

~~(c) Completion of the Axis I, II, and III.~~

~~(4) **DBHDID**][DMHMR][or its designee shall validate the MAP-620 application information.~~

~~(5) Prior to April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF-MR-DD shall be September 22, 1995 or the date of admission to the ICF-MR-DD, whichever is later, and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.~~

~~(6) Beginning April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF-MR-DD shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.~~

~~(7) The order of placement on the SCL waiting list for an individual not residing in an ICF-MR-DD shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual as follows:~~

~~(a) Emergency. The need shall be classified as emergency if an immediate service is needed as determined by any of the following if all other service options have been explored and exhausted:~~

~~1. Abuse, neglect or exploitation of the individual as substantiated by DCBS;~~

~~2. The death of the individual's primary caregiver and lack of alternative primary caregiver;~~

~~3. The lack of appropriate placement for the individual due to:~~

~~a. Loss of housing;~~

~~b. Inappropriate hospitalization; or~~

~~c. Imminent discharge from a temporary placement;~~

~~4. Jeopardy to the health and safety of the individual due to the primary caregiver's physical or mental health status;~~

~~5. The attainment of the age of twenty (20) years and six (6) months, for an individual in the custody of DCBS; or~~

~~6. Imminent or current institutionalization in an ICF-MR-DD;~~

~~(b) Urgent. The need shall be classified as urgent if a service is needed within one (1) year as determined by:~~

~~1. Threatened loss of the individual's existing funding source for supports within the year due to the individual's age or eligibility;~~

~~2. The individual is residing in a temporary or inappropriate placement but his or her health and safety is assured;~~

~~3. The diminished capacity of the primary caregiver due to physical or mental status and the lack of an alternative primary caregiver; or~~

~~4. The individual exhibits an intermittent behavior or action that requires hospitalization or police intervention;~~

~~(c) Future planning. The need shall be classified as future planning if a service is needed in greater than one (1) year as determined by:~~

~~1. The individual is currently receiving a service through another funding source that meets his or her needs;~~

~~2. The individual is not currently receiving a service and does not currently need the service;~~

~~3. The individual is in the custody of DCBS and is less than twenty (20) years and six (6) months of age; or~~

~~4. The individual is less than twenty-one (21) years of age.~~

~~(8) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.~~

~~(9) A written notification of original placement on the SCL waiting list and any changes due to reconsideration shall be mailed to an individual or his or her legal representative and case management provider if identified.~~

~~(10) In determining chronological status, the original date of receipt of a MAP- 620 shall be maintained and shall not~~

~~**change when an individual is moved from one (1) category of need to another.**~~

~~**(11) Maintenance of the SCL waiting list shall occur as follows:**~~

~~**(a) Validation shall be completed based upon the chronological date of placement on the SCL waiting list within each geographic region; and**~~

~~**(b)1. The department shall, at a minimum, annually update the waiting list during the birth month of an individual.**~~

~~**2. The individual or his or her legal representative and case management provider shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and his or her continued desire to pursue placement in the SCL program.**~~

~~**3. If a discrepancy is noted in diagnostic information at the time of the annual update, the department may request a current diagnosis of MR/DD signed by a physician or SCL MRP, including documentation supporting the diagnosis.**~~

~~**4. The requested data shall be received by the department within thirty (30) days from the date of the letter.**~~

~~**(12) Reassignment of category of need shall be completed based on the updated information and validation process.**~~

~~**(13) An individual or his or her legal representative may submit a written request for consideration of movement from one (1) category of need to another if there is a change in status of the individual.**~~

~~**(14) If an individual on the SCL waiting list in the emergency category of need is placed in an ICF-MR-DD, the category of need shall not change.**~~

~~**(15) The criteria for removal from the SCL waiting list shall be:**~~

~~**(a) After a documented attempt, the department is unable to locate the individual or his or her legal representative;**~~

~~**(b) The individual is deceased;**~~

~~**(c) Review of documentation reveals that the individual does not have an intellectual disability]**[a mental retardation]~~**[diagnosis or a developmental disability diagnosis as defined in Section 1 of this administrative regulation;**~~

~~**(d) Notification of potential SCL funding is made and the individual or his or her legal representative declines the potential funding and does not request to be maintained on the SCL waiting list; or**~~

~~**(e) Notification of potential SCL funding is made and the individual or his or her legal representative does not, without good cause, complete the application process with the department within sixty (60) days of the potential funding notice date.**~~

~~**1. The individual or legal representative shall have the burden of providing documentation of good cause, including:**~~

~~**a. A signed statement by the individual or the legal representative;**~~

~~**b. Copies of letters to providers;**~~

~~**c. Copies of letters from providers; and**~~

~~**d. A copy of a transition plan for individuals residing in a facility.**~~

~~**2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:**~~

~~**a. Sixty (60) days for an individual who does not reside in a facility; or**~~

~~**b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan, for an individual who does reside in a facility.**~~

~~**(16) If notification of potential SCL funding is made and an individual or his or her legal representative declines the potential funding but requests to be maintained on the SCL waiting list:**~~

~~**(a) The individual shall be moved to the future planning category; and**~~

~~**(b) The chronological date shall remain the same.**~~

~~**(17) If an individual is removed from the SCL waiting list, the department shall mail written notification to the individual or his or her legal representative and the case management provider.**~~

~~**(18) The removal of an individual from the SCL waiting list shall not prevent the submittal of a new application at a later date.**~~

~~**(19) The SCL waiting list, excluding the emergency category, shall be fixed as it exists ninety (90) days prior to the expected date of offering a placement based upon the allocation of new funding and shall be resumed following the allocation of new funding.**~~

~~**(20) An individual shall be allocated potential funding based upon:**~~

~~**(a) His or her region of origin in accordance with KRS 205.6317(3) and (4);**~~

~~**(b) His or her category of need; and**~~

~~**(c) His or her chronological date of placement on the SCL waiting list.**~~

~~**(21) To be allocated potential funding, an individual residing in an institution shall meet the following additional criteria:**~~

~~**(a) The treatment professionals determine that an SCL placement is appropriate for the individual; and**~~

~~**(b) The SCL placement is not opposed by the individual or his or her legal representative.]**~~

Section 8. Use of Electronic Signatures. **The electronic signature policies and requirements established in 907 KAR 12:010 shall apply to all SCL waiver service providers.**~~**[(1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120, and all applicable state and federal statutes and regulations.**~~

~~**(2) A SCL service provider choosing to utilize electronic signatures shall:**~~

~~**(a) Develop and implement a written security policy which shall:**~~

~~**1. Be adhered to by all of the provider's employees, officers, agents, and contractors;**~~

~~**2. Stipulate which individuals have access to each electronic signature and password authorization; and**~~

~~**3. Ensure that an electronic signature is created, transmitted, and stored in a secure fashion;**~~

~~**(b) Develop a consent form which shall:**~~

~~**1. Be completed and executed by each individual utilizing an electronic signature;**~~

~~**2. Attest to the signature's authenticity; and**~~

~~**3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and**~~

~~**(3) Produce to the department a copy of the agency's electronic signature policy, the signed consent form, and the original filed signature immediately upon request.]**~~

Section 9. Transition to New SCL Waiver. (1) The policies established in **Section 4 of** this administrative regulation shall apply to SCL waiver services provided:

(a) To an SCL waiver service recipient until the recipient transitions to the new SCL waiver program:

1. In accordance with 907 KAR 12:010; and

2. During the month of the SCL waiver recipient's next birthday; and

(b) By an SCL waiver service provider who provides a service to an SCL waiver service recipient who has not transitioned to the new SCL waiver service program established pursuant to 907 KAR 12:010.

(2) During the month of an SCL waiver recipient's next birthday, the SCL waiver recipient who remains approved to receive SCL waiver services shall:

(a) Transition to a new SCL waiver program; and

(b) Receive services in accordance with 907 KAR 12:010 rather than in accordance with this administrative regulation.

(3) The policies established in this administrative regulation shall become null and void at the time that every eligible SCL waiver recipient served in accordance with this administrative regulation:

(a) Has transitioned to the new SCL waiver program; and

(b) Receives SCL waiver services in accordance with the policies established in 907 KAR 12:010.

Section 10. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

(4) An individual shall not appeal a category of need specified in Section 7 of this administrative regulation.

Section 11.[~~10.~~] Incorporation by Reference. (1) "Supports for Community Living Manual, October 2007 edition", is incorporated by reference.

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

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Claudia Johnson, Dr. Stephen Hall, Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service and coverage policies for the current Medicaid Supports for Community Living (SCL) waiver program. The Department for Medicaid Services (DMS) is implementing a new version of the SCL waiver program. Service and coverage policies for the new version will be established in 907 KAR 12:010 and reimbursement policies will be established in 907 KAR 12:020. Individuals will transition from the current SCL waiver program to the new SCL waiver program during the month of the recipient's next birthday. The service and coverage policies established in this administrative regulation shall continue to apply to services provided to individuals receiving SCL waiver services under this regulation. At the time that all individuals have transitioned to the new SCL waiver program, this administrative regulation shall become null and void.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish service and coverage policies for the original Medicaid SCL waiver program until individuals receiving services under the original SCL waiver program have transitioned to the new SCL waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid SCL waiver program service and coverage policies for the original SCL waiver program until individuals transition to the new SCL waiver program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid SCL waiver program service and coverage policies for the original SCL waiver program until individuals transition to the new SCL waiver program.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes that the policies established in this administrative regulation will apply to current SCL waiver participants until the individuals transition to the new SCL waiver program during the month of their next birthday. The policies established in a new SCL waiver service and coverage regulation (907 KAR 12:010) will apply to individuals once they transition to the new version of the waiver. The amendment after comments clarifies that the policies and requirements established in this administrative regulation regarding covered service (including consumer directed option services) shall apply to individuals receiving services via this administrative regulation (until they transition to receiving services via 907 KAR 12:010); and the policies and requirements regarding SCL recipient eligibility, enrollment, and termination established in this administrative regulation shall apply until individuals apply for or receive services pursuant to 907 KAR 12:010; however, the SCL waiver service provider participation policies and requirements, incident reporting policies and requirements, SCL waiting list policies and requirements, and electronic signature policies and requirements established in 907 KAR 12:010 apply to all SCL waiver service participants and providers.

(b) The necessity of the amendment to this administrative regulation: Due to the large number of SCL waiver program recipients – over, 3,500 individuals – DMS is unable to transition everyone to the new SCL waiver program concurrently; therefore, amending this regulation to establish a phased in approach is necessary. The amendment after comments is necessary to clarify the policies in this administrative regulation which apply versus the policies established in 907 KAR 12:010.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing a transition period from the current SCL waiver program to a new model of it. The amendment after comments conforms to the content of the authorizing statutes by clarifying policies and requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by establishing a transition period from the current SCL waiver program to a new model of it. The amendment after comments will assist in the effective administration of the authorizing statutes by clarifying policies and requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Providers and recipients of SCL waiver services will be affected by the amendment. Currently, there are 202 SCL waiver service providers and as of November 1, 2012 there were 3,696 recipients in the SCL waiver program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The current policies will continue to apply until an SCL waiver recipient transitions to the new waiver policies established in 907 KAR 12:010; thus, providers will need to follow the policies of this regulation for those still governed by it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Providers will benefit by receiving reimbursement for services and recipients will benefit from the staggered phase-in by being able to continue receiving SCL waiver services (under this regulation) rather than shutting down this current version and implementing the new version at once – forcing many to receive no SCL waiver services while they wait to be approved for the new version.

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

(a) Initially: The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was $264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated $2,200,000 in state funds (to be matched with $5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(b) On a continuing basis: The biennium budget allocated

$7,650,100 in state funds to be matched with $18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department 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. This administrative regulation authorizes the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was $264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated $2,200,000 in state funds (to be matched with $5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(d) How much will it cost to administer this program for subsequent years? The biennium budget allocated $7,650,100 in state funds to be matched with $18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amended After Comments)

907 KAR 1:155. Payments for supports for community living services for an individual with an intellectual or[~~mental retardation or a~~] developmental disability.

RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[~~for the provision of medical assistance to Kentucky's indigent citizenry~~]. This administrative regulation establishes the reimbursement policies[~~provisions~~] relating to home and community based waiver services provided to an individual with an intellectual**[~~or~~]**[~~mental retardation or a~~]**[developmental]** disability as an alternative to placement in an intermediate care facility for an individual with an intellectual**[~~or~~]**[~~mental retardation or a~~]**[developmental]** disability. The policies apply to supports for community living (SCL) waiver service providers who provide services to individuals who receive SCL waiver services pursuant to 907 KAR 1:145. A new SCL waiver program is being established pursuant to 907 KAR 12:010 which establishes service and coverage policies for SCL waiver recipients which shall apply upon the recipient transitioning to the new version of the SCL waiver program. The transition shall occur during the month of the recipient's next birthday. Until the SCL waiver recipient transitions to the new version of the SCL waiver program, the service policies established in 907 KAR 1:145 and reimbursement policies established in this administrative regulation shall apply to the SCL waiver recipient and to providers who provide services to the SCL waiver recipient.

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

(2) "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable either to an intellectual disability as defined in this section or a condition related to an intellectual disability that results in:

1. An impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. Are a direct result of, or are influenced by, the person's cognitive deficits.

(3) "Intellectual disability" or "ID" means a demonstration:

(a)1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of approximately seventy (70) or below; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

a. Communication;

b. Self-care;

c. Home living;

d. Social or interpersonal skills;

e. Use of community resources;

f. Self-direction;

g. Functional academic skills;

h. Work;

i. Leisure; or

j. Health and safety; and

(b) Which occurred prior to the individual reaching eighteen (18) years of age.

(4) "North Carolina Support Needs Assessment Profile" or "NC-SNAP" means a standardized tool used for the measurement of supportive services needed by an individual with a disability.

(5)[~~(3)~~] "Overall level of eligible support" means the highest of three (3) scores from the daily living domain, health care domain, or behavior domain, as established by the NC-SNAP.

(6)[~~(4)~~] "Supports for community living services" or "SCL services" means community-based waiver services for an individual with an intellectual or[~~mental retardation or a~~] developmental disability.

Section 2. Coverage. (1) The department shall reimburse a

participating SCL provider for a covered service provided to a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for **individuals with intellectual disabilities[~~an individual with an intellectual or~~]**[~~mental retardation or a~~]**[~~developmental disability~~]** as established in 907 KAR 1:022; and

(b) Is authorized for an SCL service by the department.

(2) In order to be covered, a service shall be provided in accordance with the terms and conditions specified in 907 KAR 1:145.

Section 3. SCL Reimbursement. (1) Specialized medical equipment and supplies shall:

(a) Be a unit of service in which one (1) unit equals one (1) item as provided in Section 4 of this administrative regulation;

(b) Be reimbursed:

1. By a reduction of twenty (20) percent of submitted costs for approved dental services; and

2. Based on the submission of three (3) price estimates of which the lowest shall determine the amount of reimbursement; and

(c) Not include furniture, a recreational item, or a leisure item.

(2) A functional assessment to determine the need for a behavior support plan shall be limited to a total of forty (40) units per recipient per provider.

(3) A behavior support plan, if required, shall be limited to a total of twenty-four (24) units per recipient per provider.

(4) Monitoring a behavior support plan shall be limited to twelve (12) units per week.

Section 4. Fixed Upper Payment Limits. (1) The following rates shall be the fixed upper payment limits for the SCL services in conjunction with the corresponding units of service:

Service	Unit of Service	Upper Payment Limit
Adult day training on-site	15 minutes	$2.50
Adult day training off-site	15 minutes	$3.00
Adult foster care	24 hours	$112.49
Assessment/reassessment	1 assessment or reassessment	$75.00
Behavior support	15 minutes	$33.25
Case management	1 month	$376.06
Children's day habilitation	15 minutes	$2.50
Community living supports	15 minutes	$5.54
Family home provider	24 hours	$112.49
Group home	24 hours	$126.35
Occupational therapy by occupational therapist	15 minutes	$22.17
Occupational therapy by certified occupational therapy assistant	15 minutes	$22.17
Physical therapy by physical therapist	15 minutes	$22.17
Physical therapy by physical therapy assistant	15 minutes	$22.17
Psychological services	15 minutes	$38.79
Respite	15 minutes	$2.77
Specialized medical equipment and supplies	1 item	Based on submission of 3 price estimates and reimbursed as described in Section 3 of this administrative regulation.
Speech therapy	15 minutes	$22.17
Staffed residence	24 hours	$168.46
Supported Employment	15 minutes	$5.54

(2) Adult day training on-site and off-site shall be limited to:

(a) Forty (40) hours (160 units) per week; and

(b) 255 days per calendar year with the specific days established in the individual support plan and approved by the department.

(3) Children's day habilitation shall be limited to forty (40) hours (160 units) per week.

Section 5. Non-Level II Intensity Payment. (1) In addition to the rates specified in Section 4 of this administrative regulation, a provider shall receive an intensity payment if the provider meets the criteria established in subsection (2) of this section.

(2) A non-Level II intensity payment for a unit of service shall be:

(a) Made if a recipient has a score equal to five (5) on the NC-SNAP;

(b) Made for no more than ten (10) percent of the total Medicaid SCL population; and

(c) For the following SCL services:

1. Staffed residence;
2. Community living supports;
3. Respite;
4. Family home provider;
5. Group home;
6. Adult foster care home;
7. Adult day training on-site;
8. Adult day training off-site; or
9. Children's day habilitation.

(3) A non-Level II intensity payment for a unit of service shall be as follows:

Service	Intensity Payment
Adult day training on-site	$0.40
Adult day training off-site	$0.40
Children's day habilitation	$0.40
Staffed residence	$33.69
Community living	$0.83
Respite	$0.42
Family home provider	$16.87
Group home	$25.27
Adult foster care home	$16.87

Section 6. Level II Intensity Payment. (1) The department shall reimburse an adult day health care center which qualifies for Level II reimbursement pursuant to 907 KAR 1:170 an intensity payment of fifty (50) cents per unit for adult day training on-site or adult day training off-site provided to an SCL recipient.

(2) If an SCL recipient qualifies an adult day health care center for a non-Level II intensity payment and a Level II intensity payment, the department shall pay the Level II intensity payment.

Section 7. All-Inclusive Enhanced Rate. (1) Effective September 1, 2006, the department shall reimburse an all-inclusive rate of $125,000 per recipient per year to a group home, staffed residence, family home provider, or adult foster care home for SCL services that are provided, in accordance with 907 KAR 1:145, Section 4, to an individual who has transitioned from an institutional setting to a community setting.

(2) The rate established in subsection (1) of this section shall be paid for care to an individual who:

(a) Prior to the transition, expressed, or whose legal guardian expressed, a desire to transition from the facility in which he resided to a community placement; and

(b)1. Prior to the transition, resided in an **ICF-IID[~~ICF-ID~~]**[~~ICF-~~

~~MR-DD~~] for the entire two (2) year period, with the period ending no earlier than July 1, 2006, immediately preceding transitioning out of the **ICF-IID[~~ICF-ID~~]**[~~ICF-MR-DD~~] and who was approved by the department for transitioning;

2. Resided in an **ICF-IID[~~ICF-ID~~]**[~~ICF-MR-DD~~] for a period of less than two (2) years but more than six (6) months, with the period ending no earlier than July 1, 2006, immediately preceding transitioning out of the **ICF-IID[~~ICF-ID~~]**[~~ICF-MR-DD~~] and who was approved for transitioning by the department; or

3.a. Transitioned from an institutional setting other than an **ICF-IID[~~ICF-ID~~]**[~~ICF-MR-DD~~];

b. Had a primary diagnosis of[~~mental retardation~~]**[~~or~~]** developmental disability;

c. Had resided in an **ICF-IID[~~ICF-ID~~]**[~~ICF-MR-D~~] for a period of at least six (6) months within the preceding two (2) years;

d. Had received prior SCL funding; and

e. Had been reviewed and approved for transitioning by the department.

(3) To be considered for providing services to an individual meeting the criteria established in subsection (2) of this section, a provider shall:

(a) Demonstrate its ability to ensure that the potential recipient will have access to each service identified in his or her individual support plan through:

1. The provider's own operation; or

2. An established network of providers that are:

a. Enrolled in the Medicaid Program; or

b. Certified or licensed in accordance with state law governing their specific area of practice;

(b) Notify the department in writing:

1. Of the number of individuals it is willing and able to accept;

2. The date it will be able to accept an individual or individuals; and

3. That it is willing and able to provide services to a minimum of one (1) individual who has scored at least five (5) on the NC-SNAP; and

(c) Be able to serve a minimum of three (3) individuals, regardless of funding source, in the residence. A provider shall not be required to serve a minimum of three (3) individuals referenced in subsection (2) of this section, but shall be able to serve a minimum of three (3) individuals in the residence.

(4) To receive the rate established in subsection (1) of this section, a provider shall submit documentation to the department of each SCL service provided to the recipient for whom the special rate is paid.

(5) The reimbursement established in subsection (1) of this section:

(a) Shall expire if approval from the Centers for Medicare and Medicaid Services ceases and corresponding funding becomes unavailable; and

(b) Shall be all inclusive, meaning that it shall cover residential as well as all other SCL services, in accordance with 907 KAR 1:145, Section 4, provided to the recipient for a year.

(6) Recipient freedom of choice provisions shall apply during an individual's transition from an institution to a group home, staffed residence, family home provider or adult foster care home.

(7) An individual may transition to a group home, staffed residence, family home provider, or adult foster care home if:

(a) The individual is eligible for SCL services pursuant to 907 KAR 1:145;

(b) The department determines that the group home, staffed residence, family home provider, or adult foster care home satisfies the requirements established in this section; and

(c) The group home, staffed residence, family home provider, or adult foster care home meets the SCL provider requirements established in 907 KAR 1:145.

(8)(a) If a group home, staffed residence, family home provider, or adult foster care home declines to accept an individual referenced in subsection (2) of this section, the provider, except as established in paragraph (b) of this subsection, shall be ineligible to:

1. Provide services to any future individual who meets the criteria established in subsection (2) of this section; and

2. Receive the corresponding rate referenced in subsection (1) of this section for care provided to any future individual.

(b) If the department determines that a provider who declines to accept an individual is not equipped to serve the individual and that the placement would be inappropriate, the provider may be considered for future placements and payments.

(c) Refusing to accept an individual referenced in subsection (2) of this section shall not preclude a provider from continuing to:

1. Serve an individual meeting the criteria established in subsection (2) of this section who is already residing in the provider's residence; or

2. Be reimbursed at the rate established in subsection (1) of this section for services provided to an individual already residing in the provider's residence.

Section 8. North Carolina Support Needs Assessment Profile (NC-SNAP). (1) A recipient of an SCL waiver service shall have an NC-SNAP administered:

(a) By the department; and

(b) In accordance with the NC-SNAP Instructor's Manual.

(2) A new NC-SNAP may be administered:

(a) At the department's discretion; or

(b) At the timely request of an SCL provider if a change in a recipient's circumstances results in the need for increased or decreased supportive services.

(3) A provider shall be responsible for the cost of an NC-SNAP at the time administered:

(a) In accordance with subsection (2)(b) of this section; or

(b) As a result of an appeal filed in accordance with Section 10 (1) of this administrative regulation.

Section 9. Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 1:145, Section 3(10).

Section 10. Transition to New SCL Waiver. (1) The reimbursement policies established in this administrative regulation shall:

(a) Apply to an SCL waiver service provided to an SCL waiver service recipient pursuant to 907 KAR 1:145; or

(b) Not apply to an SCL waiver service provided to an SCL waiver service recipient pursuant to 907 KAR 12:010.

(2) An SCL waiver service provided to an SCL waiver service recipient pursuant to 907 KAR 12:010 shall be reimbursed pursuant to 907 KAR 12:020.

(3) The policies established in this administrative regulation shall become null and void at the time that:

(a) All SCL waiver service recipients receive SCL waiver services pursuant to 907 KAR 12:010; and

(b) No SCL waiver recipient receives SCL waiver services pursuant to 907 KAR 1:145.

Section 11.[~~Section 10~~] Appeal Rights. (1) An appeal of an NC-SNAP score in accordance with 907 KAR 1:671 shall not be allowed if the change in score does not affect the provider's reimbursement level.

(2) An appeal of a department decision regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(3) An appeal of a department decision regarding the eligibility of an individual shall be in accordance with 907 KAR 1:560.

(4) A provider may appeal a department decision regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 12.[~~11.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-95 Request for Equipment Form" Department for Medicaid Services, September 2002 Edition;

(b) "North Carolina Support Needs Assessment Profile (NC-SNAP)", 2000 Edition, copyright Murdoch Center Foundation; and

(c) "NC-SNAP Instructor's Manual", copyright 1999, Murdoch Center Foundation.

(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, Mon-

day through Friday, 8 a.m. to 4:30 p.m.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: November 14, 2012
FILED WITH LRC: November 14, 2012 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Claudia Johnson, Dr. Stephen Hall, Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement policies for the current Medicaid Supports for Community Living (SCL) waiver program. The Department for Medicaid Services (DMS) is implementing a new version of the SCL waiver program. Service and coverage policies for the new version will be established in 907 KAR 12:010 and reimbursement policies will be established in 907 KAR 12:020. Individuals will transition from the current SCL waiver program to the new SCL waiver program during the month of the individual's next birthday. The reimbursement policies established in this administrative regulation shall continue to apply to services provided to individuals receiving SCL waiver services under this regulation. At the time that all individuals have transitioned to the new SCL waiver program, this administrative regulation shall become null and void.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish reimbursement policies for the original Medicaid SCL waiver program until individuals receiving services under the original SCL waiver program have transitioned to the new SCL waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies for the original SCL waiver program until individuals transition to the new SCL waiver program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies for the original SCL waiver program until individuals transition to the new SCL waiver program.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes that until individuals have transitioned to the new SCL waiver program, the reimbursement policies in this administrative regulation shall continue to apply to SCL waiver services provided to those individuals. The amendment after comments corrects the acronym used for intermediate care facility for individuals with an intellectual disability. The correct acronym [which is used by the Centers for Medicare and Medicaid Services (CMS) which approved this program and provides federal funding for it] is ICF-IID.

(b) The necessity of the amendment to this administrative regulation: Due to the large number of SCL waiver program recipients – over, 3,500 individuals – DMS is unable to transition everyone to the new SCL waiver program concurrently; therefore, amending this regulation to establish a phased in approach is necessary. The amendment after comments is necessary to use the correct acronym (ICF-IID) employed by CMS.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing a transition period from the current SCL waiver program to a new model of it. The amendment after comments conforms to the content of the authorizing statutes by using an acronym used by CMS.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by establishing a transition period from the current SCL waiver program to a new model of it. The amendment after comments will assist in the effective administration of the authorizing statutes by using an acronym used by CMS.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Providers of SCL services will be affected by the amendment. Currently, there are 202 such 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. No action is required by the 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 is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Providers will benefit by being reimbursed for services provided.

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

(a) Initially: The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was $264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated $2,200,000 in state funds (to be matched with $5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(b) On a continuing basis: The biennium budget allocated $7,650,100 in state funds to be matched with $18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

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

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

(9) Tiering: Is tiering applied? The administrative regulation contains a higher level of reimbursement (Level II) for providers who serve individuals with more intense needs than the lower reimbursement levels.

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. This administrative regulation authorizes the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was $264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated $2,200,000 in state funds (to be matched with $5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(d) How much will it cost to administer this program for subsequent years? The biennium budget allocated $7,650,100 in state funds to be matched with $18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amended After Comments)

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

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 441 Subpart G, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community based services waivers. This administrative regulation establishes the service and coverage policies for a new version of the Supports for Community Living (SCL) waiver program and applies to SCL waiver services covered pursuant to this administrative regulation rather than SCL waiver services covered pursuant to 907 KAR 1:145. During the month of their next birthday, current SCL waiver participants will transition to the new SCL waiver program and be governed by the policies established in this administrative regulation rather than those established in 907 KAR 1:145. The SCL waiver program is federally authorized via a 1915(c) home and community based waiver which enables individuals with an intellectual or developmental disability to reside and receive services in a community setting rather than in an intermediate care facility for individuals with an intellectual or developmental disability, including a consumer directed option pursuant to KRS 205.5606. **Funding for the SCL waiver program is associated with and generated through SCL waiver program participants rather than SCL waiver service providers.**

Section 1. Definitions. (1) "1915(c) home and community based waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Abuse" is defined by KRS 209.020(8).

(3) "Adult day health care center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(4) "Adult foster care home" means a home:

(a) Not owned or leased by an SCL provider;

(b) In which a participant:

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

2. Receives SCL services and resides in the family occupied (leased or owned) home; and

(c) In which the family:

1. Includes the participant in the family's household routines;

2. Provides training and supervision; and

3. Ensures that the participant's needs are met in accordance with the:

a. Participant's plan of care; and

b. Supports for Community Living Policy Manual.

(5) "Behavior intervention committee" or "BIC" means a group of individuals:

(a) Established to evaluate the technical adequacy of a proposed behavioral intervention for a participant; and

(b) Which meets in accordance with the BIC policies established in the Supports for Community Living Manual.

(6) "Blended services" means a non-duplicative combination of traditional and participant directed services:

(a) Described in Sections 4 and 5 of this administrative regulation; and

(b) Provided in accordance with a participant's approved person centered plan of care.

(7) "Board" means three (3) meals a day or other full nutritional regimen of a caregiver for the purpose of providing shared living services.

(8) "Budget allowance" is defined by KRS 205.5605(1).

(9) "Case manager" means an individual who:

(a) Works closely with a participant to ensure that the:

1. Participant's person centered plan of care focuses on the participant's ongoing expectations and satisfaction with the participant's life; and

2. Participant maintains the freedom of choice of providers in a conflict free climate;

(b)**1.** Has**[**~~:~~

~~1.~~**]** a bachelor's or higher degree in a human service field from an accredited college or university; **[**~~or~~**]**

2. **Has** a bachelor's degree in any other field from an accredited college or university with at least one (1) year of experience in the field of intellectual disability; **or**

3.[~~(c)~~**]** Is a registered nurse who has at least one (1) year of experience as a professional nurse in the field of intellectual disability;

(c)[~~(d)~~**]** Shall be supervised by a case management supervisor; and

(d)[~~(e)~~**]** Meets all personnel and training requirements established in Section 3 of this administrative regulation.

(10) "Case manager supervisor" means an individual who:

(a) Provides professional oversight of case managers;

(b)**1.** Has**[**~~:~~

~~1.~~**]** a bachelor's or higher degree in a human service field from an accredited college or university; **[**~~or~~**]**

2. **Has** a bachelor's degree in any other field from an accredited college or university with at least one (1) year of experience in the field of intellectual disability; **or**

3.[~~(c)~~**]** Is a registered nurse;

(c)[~~(d)~~**]** Has at least two (2) years of experience of case management responsibility in an organization which serves individuals with intellectual or developmental disabilities;

(d)[~~(e)~~**]** Completes a case management supervisory training curriculum approved by DBHDID within six (6) months of beginning supervisory responsibilities;

(e)[~~(f)~~**]** Meets all personnel and training requirements specified in Section 3 of this administrative regulation; and

(f)[~~(g)~~**]** Participates in six (6) hours per year of professional development or continuing education in the areas of person centered processes, supervision and mentoring of employees.

(11) "Certified nutritionist" is defined by KRS 310.005(12).

(12) "Certified psychologist with autonomous functioning" means a person licensed pursuant to KRS 319.056.

(13) "Certified school psychologist" means an individual certified by the Kentucky Education Professional Standards Board under 16 KAR 2:090.

(14)**[**~~"Certified social worker" is an individual who is certi-~~

~~fied in accordance with KRS 335.080.~~

~~(15)~~] "Chemical restraint" means the use of over-the-counter or prescription medication to control a participant or participant's behavior:

(a) For the convenience of staff; or

(b) As a punishment.

(15)[~~(16)~~] "Community access specialist" means an individual who:

(a) Provides support and training to a participant that empowers the participant [~~or participant's designated representative~~]to:

1. Participate in meaningful routines or events;

2. Hold a membership in a club, group, association, church, business, or organization in the community; and

3. Build a natural support system;

(b) Has:

1. A bachelor's degree in a human services field from an accredited college or university;

2. A bachelor's degree in any other field from an accredited college or university plus at least one (1) year of experience in the field of intellectual or developmental disability; or

3. Relevant experience or credentialing that will substitute for the educational requirements stated in subparagraph 1. or 2. of this paragraph on a year-for-year basis; and

(c) Meets the personnel and training requirements established in Section 3 of this administrative regulation.

(16)[~~(17)~~] "Community guide" means an individual who:

(a) Has been selected by a participant to provide training, technical assistance, and support including individual budget development and implementation in aspects of participant direction; and

(b) Has:

1. A bachelor's degree in a human services field from an accredited college or university;

2. A bachelor's degree in any other field from an accredited college or university plus at least one (1) year of experience in the field of intellectual or developmental disability; or

3. Relevant experience or credentialing that will substitute for the educational requirements stated in subparagraph 1. or 2. of this paragraph on a year-for-year basis;

(c) Meets the personnel and training requirements established in Section 3 of this administrative regulation; and

(d) Completes a community guide training curriculum approved by DBHDID within six (6) months of being employed by the first participant supported**; and**

(e) Provides services to a participant in accordance with Section 4 of this administrative regulation.

(17)[~~.~~

~~(18)~~] "Conflict free" means a **scenario in which an agency, also including any subsidiary, partnership, not-for-profit, or other business entity under control of the agency, providing case management to an individual does not also provide another waiver service to the individual.**

(18)[~~participant's case manager does not work for an agency which is responsible for providing services that are not case management services to the participant.~~

~~(19)~~] "Controlled substance" is defined by KRS 218A.010(6).

(19)[~~(20)~~] "Covered services and supports" is defined by KRS 205.5605(3).

(20)[~~(21)~~] "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(21)[~~(22)~~] "DCBS" means the Department for Community Based Services.

(22)[~~(23)~~] "Department" means the Department for Medicaid Services or its designee.

(23)[~~(24) "Designated representative" is defined by KRS 216.710(5).~~

~~(25)~~] Developmental disability means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable either to an intellectual disability as defined in this section or a condition related to an intellectual disability that results in:

1. An impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. Are a direct result of, or are influenced by, the person's cognitive deficits.

(24)[~~(26)~~] "Direct support professional" means an individual who:

(a) Provides services to a participant in accordance with Section 4 of this administrative regulation;

(b) Has direct contact with a participant when providing services to the participant;

(c) Is at least:

1. Eighteen (18) years old and has a high school diploma or GED; or

2. Twenty-one (21) years old;

(d) Meets the personnel and training requirements specified in Section 3 of this administrative regulation; and

(e) Has the ability to:

1. Communicate effectively with a participant and the participant's family;

2. Read, understand, and implement written and oral instructions;

3. Perform required documentation; and

4. Participate as a member of the participant's person centered team if requested by the participant;

(f) Demonstrates competence and knowledge on topics required to safely support the participant as described in the participant's person centered plan of care.

(25)[~~(27)~~] "Direct support professional supervisor" means an individual who:

(a) Provides oversight of direct support professionals in the provision of services to participants;

(b) Is at least:

1. Eighteen (18) years old and has a high school diploma or GED; or

2. Twenty-one (21) years old;

(c) Meets the personnel and training requirements specified in Section 3 of this administrative regulation; and

(d) Has the ability to:

1. Communicate effectively with a participant and the participant's family;

2. Read, understand, and implement written and oral instructions;

3. Perform required documentation; and

4. Participate as a member of the participant's person centered team if requested by the participant;

(e) Has at least two (2) years of experience in providing direct support to persons with a developmental disability;

(f) Demonstrates competence and knowledge on topics required to safely support the participant as described in the participant's person centered plan of care; and

(g) Completes a supervisory training curriculum approved by DBHDID within six (6) months of beginning supervisory responsibilities.

(26)[~~(28)~~] "Drug paraphernalia" is defined by KRS 218A.500(1).

(27)[~~(29)~~] "Early and periodic screening, diagnostic, and treatment services" is defined by 42 U.S.C. 1396d(r).

(28)[~~(30)~~] "Electronic signature" is defined by KRS 369.102(8).

(29)[~~(31)~~] "Employee" means[~~:~~

~~(a)~~] an individual who is employed by an SCL provider[~~, or~~

~~(b) An individual or entity who is a subcontractor for an SCL provider~~].

(30)[~~(32)~~] "Executive director" means an individual who shall:

(a) Design, develop, and implement strategic plans for an SCL provider;

(b) Maintain responsibility for the day-to-day operation of the SCL provider organization;

(c) Have a bachelor's or higher degree from an accredited institution; or

(d) Be a registered nurse,

(e) Have at least two (2) years of administrative responsibility:

1. In an organization which served individuals with an intellectual or developmental disability; and

2. That includes experience in the execution of the overall administration of an agency including:

a. Development, implementation, and accountability of the agency's budget;

b. Development, review, and implementation of the agency's policies and procedures; and

c. Supervision of employees including conducting performance evaluations;

(f) Meets all personnel and training requirements specified in Section 3 of this administrative regulation; and

(g) If providing professional oversight or supervision of employees shall meet the supervisory qualifications specified for each service defined in Section 1 of this administrative regulation.

(31)[~~(33)~~] "Exploitation" is defined by KRS 209.020(9).

(32) "Extended family member" means a relative of an individual by blood or marriage beyond the individuals included in the definition of immediate family member.

(33)[~~(34)~~] "Family home provider" means a home:

(a) Not owned or leased by an SCL provider;

(b) In which a participant receives SCL services and resides in the family occupied (leased or owned) home; and

(c) In which the family:

1. Includes the participant in the family's household routines;

2. Provides training and supervision; and

3. Ensures that the participant's needs are met in accordance with the:

a. Participant's plan of care; and

b. Supports for Community Living Policy Manual.

(34)[~~(35)~~] "Financial management **[~~services~~]**agency" means an agency contracted by the department that manages individual participant-directed service budgets.

(35)[~~(36)~~] "Functional Assessment" means an assessment performed using evidenced based tools, direct observation, and empirical measurement to obtain and identify functional relations between behavioral and environmental factors.

(36)[~~(37)~~] "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, which includes:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed but is expected to be completed in two (2) weeks or less;

(d) The individual or his or her **guardian[~~legal representative~~]** has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period; or

(e) The individual is residing in a facility and is actively participating in a transition plan to community based services, the length of which is greater than sixty (60) days but less than one (1) year.

(37)[~~(38)~~] "Group home" means a residential setting:

(a) That is licensed in accordance with 902 KAR 20:078;

(b) That is managed by a provider who meets the SCL provider requirements established in Section 3 of this administrative regulation; and

(c) In which no more than eight (8) participants reside.

(38)[~~(39)~~] "Guardian" is defined by KRS 387.010(3) and in KRS 387.812(3)**[~~. (we'll need to elaborate on how one is to know which definition applies to given circumstances~~]**.

(39)[~~(40)~~] "Homicidal ideation" means thoughts about homicide which may range from vague ideas to detailed or fully formulated plans without taking action.

(40)[~~(41)~~] "Human rights committee" means a group of individuals:

(a) Comprised of representatives from home and community based waiver provider agencies in the community where a participant resides;

(b) Who meet:

1. To ensure that the rights of participants are respected and protected through due process; and

2. In accordance with the Human Rights Committee requirements established in the Supports for Community Living Policy Manual.

(41)[~~(42)~~] Human Services field of study means psychology, behavioral analysis, counseling, rehabilitation counseling, public health, special education, sociology, gerontology, recreational therapy, education, occupational therapy, physical therapy, speech therapy, **social work,** family studies, or other degree as approved by DBHDID.

(42)[~~(43)~~] "ICF- IID" means an intermediate care facility for an individual with an intellectual**[~~or a developmental disability~~]**.

(43)[~~(44)~~] "Illicit substance" means:

(a) A drug, prescription or not prescription, used illegally or in excess of therapeutic levels;

(b) A prohibited drug; or

(c) A prohibited substance.

(44)[~~(45)~~] "Immediate family member" is defined by KRS 205.8451(3).

(45)[~~(46)~~] "Impact service" means a service designed to decrease the amount of paid supports a participant requires as the participant becomes:

(a) More independent; and

(b) Less reliant on an employee.

(46)[~~(47)~~] "Individualized education program" or "IEP" is defined by 34 C.F.R. 300.320.

(47)[~~(48)~~] "Individual family service plan" or "IFSP" is defined by KRS 200.654(9).

(48)[~~(49)~~] "Individual placement in employment services" means services provided to a participant who:

(a) Is employed by a community employer in an integrated setting;

(b) Receives minimum wage or more; and

(c) Has job responsibilities matching the employer needs with personal contributions as defined in the participant's Long-Term Employment Support Plan.

(49)[~~(50)~~] "Integrated employment site" means the location of an activity or job that provides regular interaction with people without disabilities, excluding service providers, to the same extent that a worker without disabilities in a comparable position interacts with others.

(50)[~~(51)~~] "Integrated setting" means a setting that:

(a) Enables a participant to interact with nondisabled persons to the fullest extent possible;

(b) Includes access to community activities and opportunities at times, frequencies, and with persons of a participant's choosing; and

(c) Affords a participant choice in the participant's daily life activities.

(51)[~~(52)~~] "Intellectual disability" or "ID" means**:**

(a) A demonstration:

[~~(a)~~]1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of approximately seventy (70) or below; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

a. Communication;

b. Self-care;

c. Home living;

d. Social or interpersonal skills;

e. Use of community resources;

f. Self-direction;

g. Functional academic skills;

h. Work;

i. Leisure; or

j. Health and safety; and

(b) **An intellectual disability that had an onset before[~~Which occurred prior to the individual reaching~~]** eighteen (18) years of age.

(52)[~~(53)~~] "Legally responsible individual" means:

(a) An individual who has a duty under state law to care for another person; and

(b) Includes a:

1. Parent (biological, adoptive, or foster) of a minor child who provides care to the child;

2. Guardian of a minor child who provides care to the child; or

3. Spouse of a waiver participant.

(53)[~~(54)~~] "Level of care determination" means a determination by the department that an individual meets **[~~low-intensity or high-intensity~~]** patient status criteria **for an intermediate care facility for an individual with an intellectual disability as established** in **[~~accordance with~~]**907 KAR 1:022.

(54)[~~(55)~~] "Licensed clinical social worker" means an individual who is currently licensed in accordance with KRS 335.100.

(55)[~~(56)~~] "Licensed dietitian" is defined by KRS 310.005(11).

(56)[~~(57)~~] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(57)[~~(58)~~] "Licensed practical nurse" means an individual who is currently licensed in accordance with KRS 314.051.

(58)[~~(59)~~] ''Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(59)[~~(60)~~] "Licensed psychological associate" means an individual person who is currently licensed in accordance with KRS 319.064.

(60)[~~(61)~~] "Licensed psychologist" means an individual who is currently licensed in accordance with KRS 319.050.

(61)[~~(62)~~] "Licensed psychological practitioner" means an individual who is currently licensed in accordance with KRS 319.053.

(62)[~~(63) "Licensed Social Worker" means an individual who is currently licensed in accordance with KRS 335.090.~~

~~(64)~~] "Life history" means an account of the series of events making up a participant's life including:

(a) Developmental and historical information regarding family of origin, childhood experiences, and life events to present;

(b) History of supports received across the life span; and

(c) Life style practices which may lead to greater insight regarding a participant's current preferences, behavioral patterns, wants, and needs.

(63)[~~(65)~~] "Long-Term Employment Support Plan" means a document:

(a) Incorporated by reference into this administrative regulation; and

(b) That identifies the amount and kind of support necessary for a participant to maintain employment and achieve individualized employment goals.

(64)[~~(66)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(65)[~~(67)~~] "National Core Indicators" means:

(a) **A collaboration between the National Association of State Directors of Developmental Disability Services and the Human Services Research Institute;**

(b) An[~~A voluntary~~] effort by public developmental disabilities agencies to measure and track their own performance; and

(c)[~~(b)~~] Standard measures:

1. Used across states to assess the outcomes of services provided to individuals and families; and

2. Which address key areas of concern including employment, rights, service planning, community inclusion, choice, and health and safety.

(66)[~~(68)~~] "Natural supports" means assistance, relationships, or interactions that:

(a) Allow a participate to be in the community;

(b) Include working in a job of the participant's choice in ways similar to people without disabilities;

(c) Are based on ordinary social relationships at work and in the community.

(67)[~~(69)~~] "Neglect" is defined by KRS 209.020(16).

(68)[~~(70)~~] "Occupational therapist" is defined by KRS 319A.010(3).

(69)[~~(71)~~] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(70)[~~(72)~~] "Office of Vocational Rehabilitation" means the agency mandated:

(a) By the Rehabilitation Act of 1973, as amended; and

(b) To provide individualized services to eligible individuals with disabilities with a substantial impediment to employment in order for the individual to gain and maintain employment.

(71)[~~(73)~~] "On-site supports" means a work situation in which a supported employment specialist is physically at a job site providing job training to a participant.

(72)[~~(74)~~] "Participant" means a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for an individual with an intellectual or a developmental disability as established in 907 KAR 1:022;

(b) Is authorized by the department to receive SCL waiver services; and

(c) Utilizes SCL waiver services and supports in accordance with a person centered plan of care.

(73)[~~(75)~~] "Participant directed service" means an option to receive a service which is based on the principles of self-determination and person-center thinking.

(74)[~~(76)~~] "Person centered coach" means a person who:

(a) Assists a participant and the participant's person centered team in implementing and **monitoring[~~assessing~~]** the effectiveness of the participant's person centered plan of care; and

(b) Models person centered thinking; and

(c) Is responsible for training a participant, family, **guardian[~~designated representative~~]**, natural and unpaid supports, and other members of the person centered team when barriers challenge the success of the participant in achieving his or her goals; and

(d) Has:

1.a. A high school diploma or GED; and

b. Two (2) years of experience in the field of intellectual or developmental disabilities; or

2. Has completed twelve (12) hours of college coursework in a human services field;

(d) Meets all personnel and training requirements specified in Section 3 of this administrative regulation; and

(e) Performs required documentation.

(75)[~~(77)~~] "Person centered employment plan" means a document that identifies the unique preferences, strengths, and needs of a participant in relation to the participant's work.

(76)[~~(78)~~] "Person centered plan of care" or "POC" means:

(a) The eight (8) page form incorporated by reference titled "Person Centered Plan of Care"**[~~, July 2012 edition~~]**; and

(b) A written individualized plan that is developed:

1. By:

a. An SCL participant or an SCL participant's **guardian[~~legal representative~~]**;

b. The case manager**[~~or support broker~~]**; and

c. Any other person designated by the SCL participant if the SCL participant designates any other person; and

2. Using a process that:

a. Allows the participant, or the participant's **guardian[~~designated representative~~]**, to direct the planning and allocation of resources to meet the participant's life goals;

b. Achieves understanding of how the participant:

(i) Learns;

(ii) Makes decisions; and

(iii) Chooses to live and work in the community;

c. Discovers the participant's likes and dislikes; and

d. Empowers the participant or the participant's **guardian[~~designated representative~~]** to create a life plan and corresponding plan of care for the participant that:

(i) Is based on the participant's preferences, ideas, and needs;

(ii) Encourages and supports the participant's long term satisfaction;

(iii) Is supported by a short-term plan that is based on reasonable costs, given the participant's support needs;

(iv) Includes participant input;

(v) Includes a range of supports, including funded, community, and natural supports;

(vi) Includes information necessary to support a participant during times of crisis, to include crisis prevention strategies, crisis intervention strategies, and positive behavioral supports, when deemed necessary by the participant and the participant's support team;

(vii) Assists the participant in making informed choices by facilitating knowledge of and access to services and supports.

(77)[~~(79)~~] "Person centered team" means a participant's **guardian or[~~designated~~]** representative and other individuals who are natural or paid supports and who:

(a) Recognize that evidenced based decisions are determined

within the basic framework of what is important for the participant and within the context of what is important to the participant based on informed choice; and

(b) Work together to identify what roles they will assume to assist the participant in **becoming as independent as possible in meeting the participant's needs**[~~having a comfortable and fulfilled life~~];

(c) Include providers who receive payment for services who shall:

1. Be active contributing members of the person centered team meetings;

2. Base their input upon evidence-based information; and

3. Not request reimbursement for person centered team meetings.

(78)[~~(80)~~] "Physical therapist" is defined by KRS 327.010(2).

(79)[~~(81)~~] "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(80)[~~(82)~~] "Positive behavior support specialist" means an individual who;

(a) Provides evidence-based individualized interventions that assist a participant with acquisition or maintenance of skills for community living and behavioral intervention for the reduction of maladaptive behaviors:

(b) Has a master's degree in a behavioral science and one (1) year of experience in behavioral programming;

(c) Has at least one (1) year of direct service experience with individuals with intellectual or developmental disabilities;

(d) Meets all personnel and training requirements specified in Section 3 of this administrative regulation; and

(e) Participates in at least six (6) hours per year of professional development or continuing education in the areas of psychology, behavioral supports, applied behavioral science, or school psychology.

(81)[~~(83)~~] "Prohibited drugs and substances" means all drugs and substances which are illegal under KRS Chapter 218A or other statutes or administrative regulations of the Commonwealth of Kentucky.

(82)[~~(84)~~] "Registered agent" means an individual meeting the requirements of KRS 14A.4-010(1)(b).

(83)[~~(85)~~] "Registered office" means an office meeting the requirements of KRS 14A.4-010(1)(a).

(84)[~~(86)~~] "Registered nurse" is defined by KRS 314.011(5).

(85)[~~(87)~~] "Representative" is defined in KRS 205.5605(6).

(86)[~~(88)~~] "Room" means for the purpose of providing shared living, the aggregate expense of housing costs including:

(a) Rent, lease, or mortgage payments;

(b) Real estate taxes;

(c) Insurance;

(d) Maintenance; and

(e) Utilities.

(87)[~~(89)~~] "SCL developmental disability professional" or "SCL DDP" means an individual who:

(a) Has at least one (1) year of experience working with persons with intellectual or developmental disabilities;

(b) Meets all personnel and training requirements specified in Section 3 of this administrative regulation; and

(c)1. Is a doctor of medicine or osteopathy;

2. Is currently a registered nurse; or

3. Holds at least a bachelor's degree from an accredited institution in a human services field.

(88)[~~(90)~~] "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

(89)[~~(91)~~] "Segregated setting" means a congregate setting that is populated exclusively or primarily with individuals with disabilities.

(90)[~~(92)~~] "Serious medication error" means a medication error that requires or has the potential to require a medical intervention or treatment.

(91)[~~(93)~~] "Shared living caregiver" means an unrelated individual who:

(a) Resides with a participant in the participant's home;

(b) Provides supervision and necessary personal assistance services as specified in the participant's person centered plan of care;

(c)1. Is at least eighteen (18) years of age and has a high school diploma or GED; or

2. Is at least twenty-one (21) years old;

(d) Meets all personnel and training requirements specified in Section 3 of this administrative regulation; and

(e) Has the ability to:

1. Communicate effectively with a participant and the participant's family;

2. Read, understand and implement written and verbal instructions; and

3. Perform required documentation; **[**~~and~~**]**

(f) Has been determined by the participant's person centered team to meet the following qualifications prior to being alone with the participant:

1. Demonstrate competence and knowledge on topics required to safely support the participant as described in the participant's person centered plan of care; and

2. Ability to participate as a member of the participant's person centered team if requested by the participant**; and**

(g) Does not have any of the following relationships to the participant:

1. Immediate family member;

2. Extended family member;

3. Guardian; or

4. Legally responsible individual.

(92)[~~.~~

~~**(94) "Shared living service" means a participant directed service:**~~

~~**(a) Designed as an alternative to residential services; and**~~

~~**(b) Which allows a participant to live in the participant's own home with an unrelated caregiver who:**~~

~~**1. Resides in the same home; and**~~

~~**2. Provides some of the participant's supports in exchange for the caregiver's share of room and board expenses.**~~

~~**(95)**~~**]** "Speech-language pathologist" is defined by KRS 334A.020(3).

(93)[~~(96)~~] "Staffed residence" means a residential setting:

(a) That is owned or leased by a provider who meets the SCL provider requirements established in Section 3 of this administrative regulation; and

(b) In which no more than three (3) participants reside.

(94)[~~(97)~~] "Subcontractor" means an entity or an individual**[**~~who~~**]**:

(a) **Who** is a currently credentialed professional or other service provider; **[**~~and~~**]**

(b) **Who** has signed an agreement with a certified SCL agency to provide SCL services and supports**; and**

(c) To whom the employee requirements in this administrative regulation apply.

(95)[~~(98)~~] "Suicidal ideation" means thoughts about suicide which may range from being fleeting in nature to detailed planning.

(96)[~~(99)~~] "Supported employment specialist" means an individual who:

(a) Provides ongoing support services to eligible participants in supported employment jobs **in accordance with Section 4 of this administrative regulation**;

(b)1. Has at least a bachelor's degree from an accredited college or university and one (1) year of experience in the field of developmental disabilities; or

2. Has relevant experience or credentialing that substitutes for the educational requirement stated in subparagraph 1. of this paragraph on a year-for-year basis; and

(c) Meets the personnel and training requirements specified in Section 3 of this administrative regulation; and

(e) Completes the Kentucky Supported Employment Training Project curriculum from the Human Development Institute at the University of Kentucky within six (6) months of the date the specialist begins providing SCL supported employment services.

(97)[~~(100)~~] "Supported employment specialist supervisor" means an individual who:

(a) Provides professional oversight of a supported employment

specialist;

(b)1. Has at least a bachelor's degree from an accredited college or university and two (2) years of experience in the field of developmental disabilities; or

2. Has relevant experience or credentialing that substitutes for the educational requirement stated in subparagraph 1. of this paragraph on a year-for-year basis; and

(c) Meets the personnel and training requirements specified in Section 3 of this administrative regulation; and

(d) Has successfully completed the Supported Employment Training Project Administrator Training provided by the Human Development Institute at the University of Kentucky; and

(e) Successfully completes a supervisory training curriculum approved by DBHDID within six (6) months of beginning supervisory responsibilities.

(98)[~~(101)~~] "Supports for community living" or "SCL" means home and community-based waiver services for an individual with an intellectual or developmental disability.

(99)[~~(102)~~] "Supports intensity scale" or "SIS" means an assessment tool developed by the American Association on Intellectual and Developmental Disabilities (AAIDD) that:

(a) Measures practical support requirements of individuals with intellectual or developmental disabilities in daily living, medical, and behavioral areas; and

(b) Is administered by a trained professional in the human services field as approved by the department.

Section 2. SCL Participant Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the SCL program, an individual shall:

(a) **[~~Be placed on the SCL waiting list in accordance with Section 7 of this administrative regulation;~~**

~~(b)~~] Receive notification of potential SCL funding in accordance with Section 7 of this administrative regulation;

(b)[~~(c)~~] Meet ICF-IID patient status requirements established in 907 KAR 1:022;

(c)[~~(d)~~] Meet Medicaid eligibility requirements established in 907 KAR 1:605;

(d)[~~(e)~~] Upon receiving notification of potential SCL funding, submit an application packet to the department which shall contain:

1. A completed Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350;

2. The results of a physical examination that was conducted within the last twelve (12) months;

3. A life history which is less than one (1) year old;

4. A MAP-24C documenting a participant's status change.

(2)(a) To maintain eligibility as a participant:

1. A participant shall be administered a Supports Intensity Scale assessment by the department at least once every **twenty-four (24)[~~twelve (12)~~]** months;

2. A participant shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

3. An ICF-IID level of care determination shall be performed by the department at least once every twelve (12) months.

(b) The department shall:

1. Obtain the rights to use a Supports Intensity Scale; and

2. Use it in accordance with the terms and conditions required by the copyright associated with it.

(3) An SCL waiver service shall not be provided to an individual who is:

(a) Receiving a service in another 1915(c) home and community based waiver program;

(b) Receiving a duplicative service provided through another funding source; or

(c) An inpatient of an ICF-IID or other facility.

(4)**(a)** **[~~The department may exclude from receiving an SCL waiver service an applicant for whom the aggregate cost of SCL waiver services would reasonably be expected to exceed the cost of ICF-IID services.~~**

~~(5)(a)~~] Involuntary termination and loss of an SCL waiver program placement shall be:

1. In accordance with 907 KAR 1:563; and

2. Initiated if:

a. An applicant fails to access an SCL waiver service within sixty (60) days of receiving notice of potential funding without receiving an extension; or

b. A participant:

(i) Fails to access any services outlined in the participant's POC for a period greater than sixty (60) consecutive days without demonstrating good cause;

(ii) Moves to a residence outside of the Commonwealth of Kentucky;

(iii) Does not meet ICF-IID patient status criteria in accordance with 907 KAR 1:022.

(b)1. After receiving notice of an involuntary termination due to failing to access services or requesting an extension, an applicant or the applicant's **guardian[~~designated representative~~]** shall have the burden of requesting an extension by submitting a statement to the department that:

a. Has been signed by the applicant or applicant's **guardian[~~designated representative~~]**;

a. Explains the reason for the delay in accessing services;

b. States the steps being taken to access services; and

c. States the date that the applicant expects to begin utilizing services.

2. Upon receipt of the statement referenced in subparagraph 1. of this paragraph, the department shall grant one (1) sixty (60)-day extension in writing.

(c)1. After receiving notice of an involuntary termination due to failing to access services or demonstrating good cause, a participant shall have the burden of demonstrating good cause by submitting a statement to the department that:

a. Has been signed by the participant or the participant's **guardian[~~designated representative~~]**;

b. Explains the reason for the delay in accessing services;

c. States the steps being taken to access services; and

d. States the date that the participant expects to begin utilizing services.

2. Upon receipt of the statement referenced in subparagraph 1. of this paragraph, the department shall grant one (1) sixty (60)-day extension in writing.

(5)[~~(6)~~](a) An involuntary termination of a service to a participant by an SCL provider shall require:

1. The SCL provider to:

a. Simultaneously notify in writing the participant or participant's **guardian[~~designated representative~~]**, the participant's case manager, the department, and DBHDID at least thirty (30) days prior to the effective date of the termination;

b. Submit a MAP-24C to the department and DBHDID at the time of termination; and

2. The participant's case manager, in conjunction with the SCL provider, to:

a. Provide the participant or participant's **guardian[~~designated representative~~]** with the name, address, and telephone number of each current SCL provider in Kentucky;

b. Provide assistance to the participant or participant's **guardian[~~designated representative~~]** in making contact with another SCL provider;

c. Arrange transportation for a requested visit to an SCL provider site;

d. Provide a copy of pertinent information to the participant or participant's **guardian[~~designated representative~~]**;

e. Ensure the health, safety, and welfare of the participant until an appropriate placement is secured;

f. Continue to provide supports until alternative services or another placement is secured; and

g. Provide assistance to ensure a safe and effective service transition.

(b) The notice referenced in paragraph (a)1.a. of this subsection, shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the intended action is taken; and

4. The participant's right to appeal the intended action through the provider's appeal or grievance process.

(6)[~~(7)~~](a) DBHDID shall initiate an intent to discontinue a participant's participation in the SCL waiver program if the participant or participant's **guardian[~~designated representative~~]** submits a

written notice of intent to discontinue services to:

1. The SCL provider; and

2. DBHDID.

(b) An action to terminate waiver participation shall not be initiated until thirty (30) calendar days from the date of the notice referenced in paragraph (a) of this subsection.

(c) A participant or **guardian[~~designated representative~~]** may reconsider and revoke the notice referenced in paragraph (a) of this subsection in writing during the thirty (30) calendar day period.

Section 3. Provider Participation. (1) An SCL provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672;

(c) 907 KAR 1:673;

(d) 902 KAR 20:078;

(e) The Supports for Community Living Policy Manual;

(f) The Health Insurance Portability and Accountability Act; and

(g) 42 U.S.C. 1320d to 1320d-8.

(2) In order to provide an SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL provider shall:

(a) Successfully complete DBHDID New Provider Orientation and Medicaid provider enrollment processes;

(b) Be certified by the department prior to the initiation of a service;

(c) Be recertified at least biennially by the department;

(d) In accordance with KRS 273.182, maintain a registered agent and a registered office in Kentucky with the Office of the Secretary of State and file appropriate statement of change documentation with the filing fee with the Office of Secretary of State whenever the registered office or agent changes;

(e) Be in good standing with the Office of the Secretary of State of the Commonwealth of Kentucky pursuant to 30 KAR 1:010 and 30 KAR 1:020;

(f) Abide by the laws which govern the chosen business or tax structure of the SCL provider;

(g) Maintain policy that complies with this administrative regulation concerning the operation of the SCL provider and the health, safety, and welfare of all people supported or served by the SCL provider;

(h) Maintain an executive director who shall have the authority and responsibility for the management of the affairs of the SCL provider in accordance with written policy and procedures that comply with this administrative regulation; and

(i) Participate in the National Core Indicators' surveys and all department survey initiatives.

(3) An SCL provider shall:

(a) Ensure that SCL waiver services **[~~that are not participant directed services~~]** shall not be provided to a participant by a staff person of the SCL provider who is a **[~~legal~~]** guardian**, legally responsible individual,** or immediate family member of the participant **unless allowed for a participant directed service in accordance with Section 4 of this administrative regulation**;

(b) Not enroll a participant whose needs the SCL provider is unable to meet;

(c) Have **and[~~an~~]** follow written criteria that comply with this administrative regulation for determining the eligibility of a participant for admission to services;

(e) Document:

1. A denial for a service; and

2. The reason for the denial;

(f) Maintain documentation of its operations including:

1. A written description of available SCL waiver services;

2. A current table of organization;

3. A memorandum of understanding with all providers with whom the SCL provider shares person centered plans of care;

4. Information regarding participants' satisfaction with services and the utilization of that information;

5. A quality improvement plan that includes updated findings and corrective actions as a result of department and case management quality assurance monitoring;

6. Evidence of continuous improvement of utilizing best practice standards toward meeting SCL program goals and the critical strategic areas identified in the annual report released by the Kentucky National Core Indicators available at the Kentucky National Core Indicators Web site of http://www.nationalcoreindicators.org/states/KY/;

7. A written plan of how the SCL provider shall participate in the:

a. Human Rights Committee in the area in which the SCL provider is located; and

b. Behavior Intervention Committee in the area in which the SCL provider is located;

(g) Maintain accurate fiscal information including documentation of revenues and expenses;

(h) Maintain a written policy that room and board charges shall be determined as the lesser of:

1. Seventy (70) percent of the federal benefits rate as determined by the United States Social Security Administration; or

2. An amortized amount determined by the SCL provider based on the participants being served by the SCL provider sharing the following on an equal basis:

a. Lease, mortgage payment, or market rent;

b. Utilities and basic television services;

c. The costs of food and household goods based upon the number of people, including participants and staff, in the home during waking hours; and

d. The costs of residential telephone services on the basis of the SCL provider paying fifty (50) percent of the costs (excluding long distance telephone costs) and the participants sharing the burden of the remaining costs;

(i) Meet the following requirements if responsible for the management of a participant's funds:

1. Separate accounting shall be maintained for each participant or for the participant's interest in a common trust or special account;

2. Account balance and records of transactions shall be provided to the participant or the participant's **guardian[~~designated representative~~]** on a quarterly basis; and

3. The participant or the participant's **guardian[~~designated representative~~]** shall be notified if a balance is accrued that may affect Medicaid eligibility;

(j) Have a written statement of its mission and values which shall:

1. Support participant empowerment and informed decision-making;

2. Support and assist participants to form and remain connected to natural support networks;

3. Promote participant dignity and self-worth.

4. Support team meetings which help ensure and promote the participant's right to choice, inclusion, employment, growth, and privacy;

5. Foster a restraint-free environment where the use of mechanical restraints, seclusion, manual restraints including any manner of prone or supine restraint, or chemical restraints shall be prohibited; and

6. Support the SCL program goal that all participants:

a. Receive person centered waiver services;

b. Are safe, healthy, and respected in the participant's community;

c. Live in the community with effective, individualized assistance, and

d. Enjoy living and working in the participant's community;

(k) Have written policy and procedures for communication and interaction with a participant, family, or participant's **guardian[~~designated representative~~]** which shall include:

1. A timely response to an inquiry;

2. The opportunity for interaction by direct support professionals;

3. Prompt notification of any unusual occurrence;

4. Visitation with the participant at a reasonable time, without prior notice, and with due regard for the participant's right of privacy;

5. Involvement in decision making regarding the selection and direction of the person-centered service provided;

6. Consideration of the cultural, educational, language, and socioeconomic characteristics of the participant and family being

supported;

(l) Ensure the rights of a participant by:

1. Providing conflict free services and supports that are person centered;

2. Making available a description of the rights and means by which the rights can be exercised and supported including the right to:

a. Live and work in an integrated setting;

b. Time, space, and opportunity for personal privacy;

c. Communicate, associate, and meet privately with the person of choice;

d. Send and receive unopened mail;

e. Retain and use personal possessions including clothing and personal articles;

f. Private, accessible use of a cell phone or telephone;

3. Having a grievance and appeals system that includes an external mechanism for review of complaints;

4. Ensuring access to participation in an area human rights committee in accordance with the human rights committee policies established in the Supports for Community Living Policy Manual;

(m) Maintain fiscal records, service records, investigations, medication error logs, and incident reports for a minimum of six (6) years from the date that:

1. A covered service is provided; or

2. The participant turns twenty-one (21) years of age, if the participant is under the age of twenty-one (21);

(n) Make available all records, internal investigations, and incident reports:

1. To the:

a. Department;

b. DBHDID;

c. Office of Inspector General or its designee;

d. General Accounting Office or its designee;

e. Office of the Auditor of Public Accounts or its designee;

f. Office of the Attorney General or its designee;

g. DCBS; or

h. Centers for Medicare and Medicaid Services;

2. Pertaining to a participant to:

a. The participant, the participant's **guardian**[~~designated representative~~], or the participant's case manager upon request; or

b. Protection and Advocacy upon written request;

(o) Cooperate with monitoring visits from monitoring agents;

(p) Maintain a record for each participant served that shall:

1. Be recorded in a readable print format in ink or typed print;

2. Be free from correction fluid or correction tape;

3. Have a strike through each error that is initialed and dated;

4. Contain no blank lines in between each entry; and

5. Document late entries;

6. Contain all information necessary to support person centered practices;

7. Be cumulative;

8. Be readily available;

9. Contain documentation which meets the requirements of Section 4 of this administrative regulation;

10. Contain the following:

a. The participant summary sheet;

b. The participant's name, Social Security number, and Medicaid identification number;

c. The Supports Intensity Scale Assessment Form [~~completed at least annually~~];

d. The results of a health risk screening performed using a Health Risk Screening Tool which shall:

(i) Be administered by trained personnel [~~approved by DBHDID~~] at least annually and updated as needed;

(ii) Assist in determining a participant's areas of vulnerability for a potential health risk;

(iii) Be provided in accordance with the health risk screening tool requirements established in the Supports for Community Living Policy Manual;

e. The current person centered plan of care;

f. The goals and objectives identified by the participant and the participant's person centered team which facilitates achievement of the participant's chosen outcomes as identified in the participant's POC;

g. A list containing emergency contact telephone numbers;

h. The participant's history of allergies with appropriate allergy alerts;

i. The participant's medication record, including a copy of the **signed or authorized current** prescription or **medical orders**[~~the signed physician's order~~] and the medication administration record (MAR) if medication is administered at the service site;

j. A recognizable photograph of the participant;

k. Legally adequate consent, updated annually, and a copy of which is located at each service site for the provision of services or other treatment requiring emergency attention;

l. The participant's individual educational plan or individual family service plan, if applicable;

m. The participant's life history updated at least annually;

n. The results of an annual physical exam;

o. The results of an annual dental exam;

p. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350 updated annually;

q. A psychological evaluation;

r. A current level of care certification;

s. The prior authorization notifications [~~in the case management and residential record~~]; and

t. Incident reports, if any exist;

11. Be maintained by the provider in a manner that:

a. Ensures the confidentiality of the participant's record and other personal information; and

b. Allows the participant or **guardian**[~~designated representative~~] to determine when to share the information in accordance with law;

12. Be safe from loss, destruction, or use by an unauthorized person ensured by the provider; and

13. Have a corresponding legend which the provider shall make readily accessible;

(q) Ensure that an employee or volunteer:

1. Behave in a legal and ethical manner in providing a service;

2. Have a valid Social Security number or valid work permit if not a citizen of the United States of America;

3. If responsible for driving participants during a service delivery, have a valid [~~Kentucky~~] driver's license with proof of current mandatory liability insurance **for the vehicle used to transport the participant**;

(r) Ensure that an employee or volunteer:

1. Completes a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider within thirty (30) days of the date of hire or date the individual began serving as a volunteer; or

2. Who tests positive for TB or has a history of positive TB skin tests:

a. Shall be assessed annually by a licensed medical professional for signs or symptoms of active disease; and

b. If it is determined that signs or symptoms of active disease are present, in order for the person to be allowed to work or volunteer he or she shall be administered follow-up testing by his or her physician with the testing indicating the person does not have active TB disease; and

(s) Maintain documentation:

1. Of an annual TB risk assessment or negative TB test for each employee who performs direct support or a supervisory function; or

2. Annually for each employee with a positive TB test that ensures no active disease symptoms are present;

(t) Provide a written job description for each staff person that describes the required qualifications, duties, and responsibilities for the person's job;

(u) Maintain an employee record for each employee that includes:

1. The employee's experience;

2. The employee's training;

3. Documented competency of the employee;

4. Evidence of the employee's current licensure or registration if required by law; and

5. An annual evaluation of the employee's performance;

(v) Require a background check:

1. And drug testing for each employee who is paid with funds administered by the department and who:

a. Provides support to a participant who utilizes SCL services; or

b. Manages funds or services on behalf of a participant who utilizes SCL services; or

2. For a volunteer recruited and placed by an agency or provider who has the potential to interact with a participant;

(w) Ensure that a volunteer placed by an agency or provider does not have unsupervised interaction with a participant;

(x) For a potential employee or volunteer obtain:

1. The results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment or volunteerism;

2. The results of a nurse aid abuse registry check as described in 906 KAR 1:100 or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment or volunteerism; **and[~~or~~]**

3. Within thirty (30) days of the date of hire or initial date of volunteerism, the results of a central registry check as described in 922 KAR 1:470 or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment or volunteerism;

(y) For each potential employee obtain negative results of drug testing for illicit or prohibited drugs;

(z) On an annual basis:

1. Randomly select and perform all required criminal history background checks, nurse aid abuse registry checks, and central registry checks, pursuant to Section 3 of this administrative regulation, of at least twenty-five (25) percent of employees; and

2. Conduct drug testing of at least five (5) percent of employees;

(aa) Not employ, subcontract with, or place an individual as a volunteer who:

1. Has a prior conviction of an offense delineated in KRS 17.165(1) through (3);

2. Has a prior felony conviction, plea bargain, amended plea bargain, or diversion program that has not been completed;

3. Has a drug related conviction within the past five (5) years;

4. Has a positive drug test for prohibited drugs;

5. Has a conviction of abuse, neglect, or exploitation;

6. Has a Cabinet for Health and Family Services finding of child abuse or neglect pursuant to the central registry; or

7. Is listed on the nurse aide abuse registry;

(bb) Not permit an employee to transport a participant if the individual has a driving under the influence conviction, amended plea bargain, or diversion during the past year;

(cc) Maintain adequate staffing and supervision to implement services being billed;

(dd) Establish written guidelines that address and ensure the health, safety, and welfare of a participant, which shall include:

1. A basic infection control plan that includes:

a. Universal precautions;

b. Hand washing;

c. Proper disposal of biohazards and sharp instruments; and

d. Management of common illness likely to be emergent in the particular service setting;

2. Effective cleaning and maintenance procedures sufficient to maintain a sanitary and comfortable environment that prevents the development and transmission of infection;

3. Ensuring that each site operated by the provider is equipped with:

a. An operational smoke detector placed in all bedrooms and other strategic locations; and

b. At least two (2) correctly charged fire extinguishers placed in strategic locations, at least one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

4. Ensuring the availability of an ample supply of hot and cold running water with the water temperature complying with the safety limits established in the participant's POC;

5. Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080 which shall ensure:

a. Safe storage and use; and

b. That firearms and ammunition are permitted:

(i) Only in nonprovider owned or leased residences; and

(ii) Only if stored separately and under double lock;

6. Establishing written procedures concerning the safe storage of common household items;

7. Ensuring that the nutritional needs of a participant are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

8. Ensuring that an adequate and nutritious food supply is maintained as needed by the participant;

9. Ensuring that:

a. **Every case manager and any[~~Each case manager or~~]** employee who will be administering medication, unless the employee is a currently licensed or registered nurse, has:

(i) Specific training provided by a registered nurse per a DBHDID medication administration approved curriculum; and

(ii) Documented competency on medication administration, medication cause and effect, and proper administration and storage of medication; and

b. An individual administering medication documents all medication administered, including self-administered and over-the-counter drugs, on a medication administration record, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

(i) Be kept in a locked container;

(ii) If a controlled substance, be kept under double lock with a documented medication count performed every shift;

(iii) Be carried in a proper container labeled with medication and dosage pursuant to KRS 315.010(8) and 217.182(6);

(iv) Accompany and be administered to a participant at a program site other than the participant's residence if necessary; and

(v) Be documented on a medication administration record and properly disposed of, if discontinued; and

10. Adhering to policies and procedures for ongoing monitoring of medication administration;

(ee) Establish and follow written guidelines for handling an emergency or a disaster which shall:

1. Be readily accessible on site;

2. Include instruction for notification procedures and the use of alarm and signal systems to alert a participant according to the participant's disability;

3. Include documentation of training of staff and participants on emergency disaster drills;

4. Include an evacuation drill to be conducted in three (3) minutes or less, documented at least quarterly and, for a participant who receives residential support services, is scheduled to include a time when the participant is asleep; and

5. Mandate that the result of an evacuation drill be evaluated and if not successfully completed within three (3) minutes shall modify staffing support as necessary and repeat the evacuation drill within seven (7) days;

(ff) Provide orientation for each new employee which shall include the mission, goals, organization, and practices, policies, and procedures of the agency;

(gg)1. Annually provide or arrange for the provision of at least six (6) hours of professional development or continuing education units of competency-based training to each employee **[~~and subcontractor~~]** to teach and enhance skills related to the performance of duties, except for a case management supervisor or positive behavior support specialist;

2. Annually provide or arrange for the provision of at least six (6) hours of professional development or continuing education units in the area of person centered processes, supervision, or mentoring to each employee who is a case management supervisor; or

3. Annually provide or arrange for the provision of at least six (6) hours of professional development or continuing education units in the area of psychology, behavioral supports, applied behavioral science, or school psychology to each employee who is a positive behavior support specialist;

(hh) Require documentation of all face-to-face training which shall include:

1. The type of training provided:
2. The name and title of the trainer;
3. The training objectives;
4. The length of the training;
5. The date of completion;
6. The signature of the trainee verifying completion; and
7. Verification of competency of the trainee as demonstrated by post-training assessments, competency checklists, or post-training observations and evaluations;

(ii) Require documentation of Web-based training which shall include:

1. Transcripts verifying successful completion of training objectives with scores of eighty-five (85) percent or higher; and
2. Competency checklist listing date of completion, signature of evaluator, and signature of trainee for all Phase I or Phase II Kentucky College of Direct Support modules within the timeframe specified;

(jj) Ensure that each case manager, employee prior to independent functioning, successfully completes training which shall include:

1. First aid, which shall be provided by a certified trainer with a nationally-accredited organization to include the American Red Cross and the American Heart Association and evidenced by official documentation of completion from the nationally-accredited organization;
2. Cardiopulmonary resuscitation which shall be provided by a certified trainer with a nationally-accredited organization to include the American Red Cross and the American Heart Association and evidenced by official documentation of completion from the nationally-accredited organization;
3. Department of Behavioral Health, Developmental and Intellectual Disabilities' Crisis Prevention and Intervention Training;
4.[4a.] Successful completion of all Kentucky College of Direct Support Phase I training modules; **[~~and~~**
~~b. Training in Kentucky College of Direct Support Phase I training modules shall be paid for and facilitated by DBHDID;~~] and
5. Individualized instruction about the person centered POC of the participant to whom the trainee provides supports; and
6. Verification of trainee competency as demonstrated by pre- and post-training assessments, competency checklists, and post-training observations or evaluations;

(kk)**[~~1.~~]** Ensure that all case managers **or[~~,~~]** employees**[~~, or sub-contractors~~]**, unless the case manager, employee is a licensed professional providing a service governed by the licensure of the individual's profession, complete Kentucky College of Direct Support Phase II training modules, no later than six (6) months from the date of employment or when the individual began providing services; **[~~and~~**
~~2. Kentucky College of Direct Support Phase II module training shall be paid for and facilitated by DBHDID;~~] and

(ll) Ensure that each case manager complete DBHDID approved case management training after three (3) months but within nine (9) months from the date of hire; and

(mm) Ensure that each case manager employed prior to the effective date of this administrative regulation completes the DBHDID case management training within one (1) year of this administrative regulation's effective date; and

(nn) Ensure that each adult family member residing in a level II residential adult foster care home or family home provider who may be left alone with the participant will receive training regarding the individualized needs of the participant**[~~from the case manager~~]**.

(4) DBHDID shall:

(a) Obtain the rights to use:

1. The Health Risk Screening Tool required to be used by an SCL waiver provider pursuant to this administrative regulation; or
2. The Kentucky College of Direct Support training modules required to be used by an SCL waiver provider pursuant to this administrative regulation;

(b) Facilitate access to the:

1. Health Risk Screening Tool required to be used by an SCL waiver provider pursuant to this administrative regulation; or
2. Kentucky College of Direct Support training modules required to be used by an SCL waiver provider pursuant to this administrative regulation.

(5) An SCL provider employee or volunteer shall:

(a) Not manufacture, distribute, dispense, be under the influence of, purchase, possess, use, or attempt to purchase or obtain, sell, or transfer any of the following in the workplace or while performing work duties:

1. An alcoholic beverage;
2. A controlled substance;
3. An illicit drug;
4. A prohibited drug or prohibited substance;
5. Drug paraphernalia;
6. A substance that resembles a controlled substance, if there is evidence that the individual intended to pass off the item as a controlled substance; and

(b) Not possess a prescription drug for the purpose of selling or distributing it.

Section 4. Covered Services. (1)(a) An SCL waiver service shall:

1. Be prior authorized by the department; **and**
2. Be provided to a participant pursuant to the participant's person centered POC by an individual who meet the requirements established in **Section** 3 of this **administrative** regulation**[~~; and~~**
~~3. Be available through participant directed services for a participant who chooses this option~~].

(b) Any combination of day training, community access, personal assistance, or supported employment shall not exceed sixteen (16) hours per day.

(2) SCL covered services include:

(a) Case management;
(b) Community access services;
(c) Community guide services;
(d) Community transition services;
(e) Consultative clinical and therapeutic services;
(f) Day training;
(g) Environmental accessibility adaptation services;
(h) Goods and services;
(i) Natural supports training;
(j) Occupational therapy;
(k) Person centered coaching;
(l) Personal assistance services;
(m) Physical therapy;
(n) Positive behavior supports;
(o) Residential support services;
(p) Respite;
(q) Shared living;
(r) Specialized medical equipment and supplies;
(s) Speech therapy;
(t) Supported employment;
(u) Transportation services; or
(v) Vehicle adaptation services.

(3) Case management shall:

(a) Not include any other SCL waiver service;

(b) Be provided by a case manager who:

1. Meets the personnel and training requirements established in Section 3 of this administrative regulation; and
2. Shall not provide any other SCL waiver service to the participant receiving case management from the case manager;

(c) Be conflict free unless the department grants an exemption to the conflict free requirement in accordance with subsection (4)(b) of this section;

(d) Include initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility process;

(e) Include assisting a participant in the identification, coordination, and arrangement of the person centered team and person centered team meetings;

(f) Include facilitating person centered team meetings that assist a participant to develop, update, and monitor the POC which shall:

1. Reflect the principles and tools of self-determination to assist a participant in creating supports and services:

a. Designed to meet the needs of the participant; and

b. That promote choice, community experiences, employment, and personal satisfaction;

2. Be developed and prior authorized within thirty (30) days of the initiation of a service;

3. Include the objectives and interventions, goals, and outcomes that meet the participant's identified needs from all assessments and person centered team members;

4. Include documented participation in the development of the POC by the participant, participant's **guardian[~~designated representative~~]**, family members, other providers, or other people the participant has identified as important in the participant's life and as members of the person centered team;

5. Include information about:

a. What is important to the participant;

b. What the person centered plan will help the participant accomplish;

c. What people like and admire about the participant;

d. The characteristics of people providing support that are important to and for the participant;

e. What people need to know or do to help the participant stay healthy and safe;

f. Instructions for those who support the participant;

g. The barriers that block the participant's progress towards the participant's goals;

h. What action steps are needed to ensure that a participant's goals are reached;

i. Who is responsible for each action; and

j. When the action is anticipated to be completed;

(g) Include assisting a participant to gain access to and maintain employment, membership in community clubs, groups, activities and opportunities at the times, frequencies, and with the people the participant chooses;

(h) Include coordination and monitoring of all waiver and nonwaiver services which shall include:

1. Monthly face-to-face contacts with the participant to determine if the participant's needs are being met which shall include:

a. Contact at a location where the participant is engaged in services; and

b. Utilization of a DBHDID-approved monitoring tool to:

(i) Identify that person centered practices are demonstrated by the service provider;

(ii) Ensure that the participant's health, safety, and welfare is not at risk;

(iii) Gather data regarding the participant's satisfaction with their services for use in guiding the person centered planning process; and

(iv) Generate monthly summary notes;

2. Responsibility to initiate a person centered team meeting and receive prior authorization within fourteen (14) days of a contact visit if the results of a monthly contact visit indicate that different or additional services or other changes in the participant's POC are required to meet the participant's needs;

3. Assistance with participant directed services which shall include:

a. Assisting the participant in identifying, if necessary, a community guide and a representative who shall work with the participant on the development of a POC, budget, and emergency backup plan;

b. Assisting the participant in recruiting and managing employees;

c. Assigning modules within the Kentucky College of Direct Supports for training purposes and assisting the participant, the community guide, or the representative in monitoring the completion of training within timeframes specified in Section 5 of this administrative regulation; and

d. Monitoring the provision of services and submission of required documentation to the agency providing financial management services;

4. Authority to require immediate remediation of identified deficiencies that impact the health, safety, and welfare of a participant;

(i) Include assisting a participant in planning resource use and assuring protection of resources to include:

a. Clearly outlining the participant's insurance options and availability; and

b. Exploring the potential availability of other resources and social service programs for which the participant may qualify;

(j) Include ensuring that notification with the MAP-24C occurs to the local DCBS office, the department, and DBHDID if a participant is:

1. Terminated from the SCL waiver program;

2. Admitted to an ICF-IID;

3. Admitted to a hospital;

4. Admitted to a skilled nursing facility;

5. Transferred to another Medicaid 1915(c) home and community based waiver program; or

6. Relocated to a different address;

(k) Include monitoring to ensure that services continue if a participant has been terminated from any service until an alternate provider, if needed, has been chosen by the participant and services have been approved;

(l) Include providing a participant and the participant's team members twenty-four (24) hour telephone access to a case management staff person; and

(m) Include documentation of services by:

1. A monthly DBHDID approved person centered monitoring tool; and

2. A detailed monthly summary note which shall include:

a. The month and year for the time period the note covers;

b. An analysis of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcomes;

d. A projected plan to achieve the next step in achievement of outcomes;

e. The signature and title of the case manager completing the note;

f. The date the note was generated; and

(n) Include person centered team meetings which shall not constitute the required monthly face-to-face visit with a participant;

(o) Include the case manager being responsible for providing information about participant directed services:

1. At the time the initial POC is developed; and

2. At least annually thereafter and upon inquiry from the participant or participant's **guardian[~~designated representative~~]**; and

(p) Include the case manager supervisor performing supervision duties:

1. As outlined in Supports for Community Living Policy Manual; and

2. In accordance with a DBHDID approved case manager supervisor training.

(4)(a) If a case management service is approved to be provided despite not being conflict free, the case management provider shall document and demonstrate that the participant:

1. Receives the same level of advocacy; and

2. Exercises free choice of providers and services.

(b) An exemption to the conflict free requirement shall be granted if:

1. A participant requests the exemption; and

2. The participant's case manager provides documentation to DBHDID, in accordance with the Supports for Community Living Policy Manual, that:

a. Provides evidence that there is a lack of a qualified case manager within thirty (30) **miles[~~minutes~~]** of the participant's residence; **or[~~and~~]**

b. There is a relationship of at least one (1) year between the participant and the participant's case manager.

(c) A request to receive a case management service that is not conflict free shall accompany each prior authorization request for the case management service.

(d) One (1) unit of a case management service shall equal one (1) month.

(e) A provider shall bill for a case management service in accordance with 907 KAR 12:020.

(5) A community access service:

(a) Shall be provided by a community access specialist**[~~who meets the personnel and training requirements established in Section 3 of this administrative regulation~~]**;

(b) Shall be designed to support a participant to participate in meaningful routines, events, and activities through various com-

munity organizations; and

(c) Shall be designed to empower a participant in developing natural supports;

(d) May be participant directed**;[~~if so chosen by the participant; and~~]**

(e) **If participant directed, may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 5 of this administrative regulation;**

(f) Shall stress training that empowers a participant in acquiring, practicing, utilizing, and improving skills related to:

1. Connecting with others;

2. Independent functioning;

3. Self advocacy;

4. Socialization;

5. Community participation;

6. Personal responsibility;

7. Financial responsibility; and

8. Other skills related to optimal well-being as defined in the participant's POC;

(g)[~~(f)~~] Shall be designed to result in an increased ability to develop natural supports and access community resources including educational, recreational, religious, civic, or volunteer opportunities with an outcome of:

1. Less reliance on formal supports; and

2. Greater reliance on natural or unpaid supports as established in the participant's POC;

(h)[~~(g)~~] Shall have an emphasis on the development of personal social networks, membership opportunities, friendships, and relationships for the participant as established in the participant's POC;

(i)[~~(h)~~] Shall be provided outside the participant's home or **residential setting[~~family home provider~~]** and may occur during the day, in the evening, and on weekends;

(j)[~~(i)~~] May not duplicate residential, day training services, or authorized therapies;

(k)1.[~~(j)a.~~] Shall be provided to a participant with a one (1) to one (1) staff to participant ratio; or

2.[~~b.~~] May include a friend invited by the participant, for a ratio of one (1) staff to no more than two (2) participants according to the participant's POC;

(l)[~~(k)~~] Shall occur in an integrated community setting;

(m)[~~(l)~~] Shall be an impact service and the participant's POC shall define steps to decrease the provision of the service as the participant becomes more independent in accessing and becoming part of the community;

(n)[~~(m)~~] Shall be documented by:

1. A note documenting each contact which shall include:

a. A full description of each service rendered;

b. Evidence of training or service to support outcomes designated in the participant's POC;

c. The date of the service;

d. The location of the service;

e. The beginning and ending times of the service;

f. The signature and title of the individual providing the service; and

g. The date the entry was made in the record; and

2. A monthly summary note which shall include:

a. The month and year for the time period the note covers;

b. An analysis of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcomes;

d. Projected plan to achieve the next step in achievement of outcomes;

e. The signature and title of the community access specialist completing the note; and

f. The date the note was written; and

(o)[~~(n)~~] Shall not exceed 160 fifteen (15) minute units per week alone or in combination with community access group services.

(6)(a) A community guide service:

1. Shall be provided by a community guide who meets the personnel and training requirements established in **Sections 3 and 5[~~Section 3~~]** of this administrative regulation;

2. Shall be designed to empower a participant to define and direct the participant's services;

3. Shall only be for a participant who chooses participant directed supports for some or all of the participant's support services;

4. Shall include:

a. Direct assistance to a participant in meeting his or her participant directed responsibilities;

b. Information and assistance that help the participant in:

(i) Problem solving;

(ii) Decision making;

(iii) Developing supportive community relationships; and

(iv) Accessing resources that promotes implementation of the participant's POC; and

c. Information to ensure that the participant understands the responsibilities involved with directing the participant's services.

5. Shall be documented by:

a. A note documenting each contact which shall include:

(i) A full description of each service rendered;

(ii) The date of the service;

(iii) The location of the service;

(iv) The beginning and ending times of the service;

(v) The signature and title of the individual providing the service; and

(vi) The date the entry was made in the record; and

b. A completed monthly summary note which shall include:

(i) The month and year for the time period the note covers;

(ii) An analysis of the efficacy of the service provided including recommendations and identification of additional support needs;

(iii) The signature and title of the community guide completing the note; and

(iv) The date the note was written; and

6. Shall be limited to 576 fifteen (15) minute units per year.

(b)1. A participant and the participant's person centered team shall determine the community guide services to be received; and

2. The community guide services to be received by a participant shall be specified in the participant's POC.

(c) If needed, directed assistance provided by a community guide:

1. Shall be based on the needs of the participant; and

2. May include assistance with:

a. Recruiting, hiring, training, managing, evaluating, and changing employees;

b. Scheduling and outlining the duties of employees;

c. Developing and managing the individual budget;

d. Understanding provider qualifications;

e. Recordkeeping and other program requirements.

(d) A community guide service shall not duplicate a case management service.

(e) A community guide providing community guide services to a participant shall not provide other direct waiver services to any participant.

(f) A community guide shall not be employed by an agency that provides other direct waiver services to the participant receiving community guide services from the community guide. **[~~(g) An individual serving as a representative for a participant receiving participant directed services shall not be a community guide for that participant.~~**

~~(h) Kentucky College of Direct Support module training assigned to be completed by a community guide shall be paid for and facilitated by DBHDID.~~]

(7) Community transition services:

(a) Shall be nonrecurring set-up expenses for a participant who is transitioning from an institutional or other provider-operated living arrangement to a living arrangement in a private residence where the participant is directly responsible for his or her own living expenses;

(b) Shall be expenses that are necessary to enable a participant to establish a basic household that do not constitute room and board;

(c) May include:

1. A security deposit that is required to obtain a lease on an apartment or home;

2. An essential household furnishings or moving expense required to occupy and use a community domicile, including furniture, window coverings, food preparation items, or bed or bath

linens;

3. A one (1) time set-up fee or deposit for utility or service access, including telephone, electricity, heating, or water;

4. A service necessary for the participant's health and safety including pest eradication or one (1) time cleaning prior to occupancy;

5. A necessary home accessibility adaptation; **or**

6. An activity to assess a need and arrange for and procure needed resources**[; and**

7. Caregiver training];

(d) Shall be:

1. Furnished only:

a. To the extent that the service is reasonable and necessary;

b. As clearly identified in the participant's POC; and

c. If the service cannot be obtained from other sources;

(e) Shall not include:

1. Monthly rental or mortgage expense;

2. Food;

3. Regular utility charges;

4. Household appliances or items that are intended for purely diversional or recreational purposes; or

5. Furnishings for living arrangements that are owned or leased by an SCL provider;

(f) Shall be coordinated and documented by the participant's case manager by:

1. Description or itemized line item of purchase and cost;

2. A receipt for a procurement including date of purchase;

3. The signature and title of the case manager; and

4. The date the entry was made in the record.

(g) Shall not exceed $2,000 per qualified transition.

(8) A consultative clinical and therapeutic service shall:

(a) Be provided by a:

1. Certified nutritionist who meets the personnel and training requirements established in Section 3 of this administrative regulation;

2. Licensed dietitian who meets the personnel and training requirements established in Section 3 of this administrative regulation;

3. Licensed **[family and]** marriage **and family** therapist who meets the personnel and training requirements established in Section 3 of this administrative regulation;

4. **[Licensed practical nurse who meets the personnel and training requirements established in Section 3 of this administrative regulation;**

5.] Licensed professional clinical counselor who meets the personnel and training requirements established in Section 3 of this administrative regulation;

5.[6.] Licensed psychological associate who meets the personnel and training requirements established in Section 3 of this administrative regulation;

6.[7.] Licensed psychologist who meets the personnel and training requirements established in Section 3 of this administrative regulation;

7.[8.] Licensed psychological practitioner who meets the personnel and training requirements established in Section 3 of this administrative regulation;

8.[9.] Licensed **clinical** social worker who meets the personnel and training requirements established in Section 3 of this administrative regulation; or

9.[10.] Positive behavior support specialist who meets the personnel and training requirements established in Section 3 of this administrative regulation;

(b) Include:

1. Professional consultation, evaluation and assessment of the participant, the environment and the system of support and written summary of findings and recommendations for the participant and the participant's person center team;

2. Providing treatment that is:

a. Consistent with assessment results and diagnosis;

b. Evidence based or current best practice; and

c. Encompasses psychological treatment or counseling as indicated by the condition of the participant;

3. Coordinating program wide support, as needed, that addresses the assessed needs, conditions, or symptoms affecting a participant's ability to fully participate in the participant's community;

4. Participating in developing and revising, as needed, home treatment or support plans as components of a participant's POC;

5. Providing training and technical assistance to carry out recommendations and plans which shall occur within the settings in which the recommendations, home treatment, or support plans are to be carried out;

6. Monitoring:

a. Of the fidelity of data reporting and participant's POC implementation;

b. Of the effectiveness of the participant's POC;

c. Of the impact of the participant's POC on the participant, the participant's environment and system of supports; and

d. Which shall be conducted:

(i) In the settings where the participant's POC is implemented; and

(ii) Through discussions and observations of people implementing the participant's POC; and

(iii) Through reporting data;

7. A functional assessment which shall:

a. Be conducted by a:

(i) Licensed psychologist who meets the personnel and training requirements established in Section 3 of this administrative regulation;

(ii) Certified psychologist with autonomous functioning who meets the personnel and training requirements established in Section 3 of this administrative regulation; or

(iii) Positive behavior support specialist who meets the personnel and training requirements established in Section 3 of this administrative regulation; and

b.[(b)] Include all functional assessment components specified in the Supports for Community Living Policy Manual;

8. Documentation of a service by**[:**

a.] a note documenting each contact which shall include:

a.[(i)] A full description of each service rendered;

b. An analysis of the efficacy of the service provided including any recommendation or identification of additional support needs if needed;

c.[(ii)] The date of the service;

d.[(iii)] The location of the service;

e.[(iv)] The beginning and end times of the service;

f.[(v)] The signature and title of the professional providing the service;

g.[(vi)] The date the entry was made in the record; **[b. A completed monthly summary note which shall include:**

(i) The month and year for the period covered by the note;

(ii) An analysis of the efficacy of the service providing including recommendations and identification of additional support needs if needed;

(iii) The signature and title of the professional completing the note;

(iv) The date the note was written;] and

(c) Not exceed 160 fifteen (15) minute units per year.

(9) Day training:

(a) Shall be provided by a direct support professional;

(b) Shall include:

1. Providing regularly scheduled activities in a non-residential setting that are designed to foster the acquisition of skills, build positive social behavior and interpersonal competence, foster greater independence and personal choice; **[and]**

2. Career planning **or pre-vocational** activities to develop experiential learning opportunities and career options consistent with the participant's skills and interests that:

a. Are person centered and designed to support employment related goals; **[and]**

b. **Provide active training designed to prepare a participant to transition from school to adult responsibilities, community integration, and work;**

c. Enable each individual to attain the highest level of work in the most integrated setting with the job matched to the participant's interest, strengths, priorities, abilities, and capabilities; and

d. Include:

(i) Skill development to communicate effectively with supervisors, co-workers, and customer;

(ii) Generally accepted community workplace conduct and dress;

(iii) Workplace problem solving skills and strategies;

(iv) General workplace safety;

(v) The ability to follow directions;

(vi) The ability to attend tasks; or

(vii) Mobility training;

3.[~~Directly relate to personally chosen outcomes by the participant which shall be documented in the participant's POC; and~~

~~c. Are time limited;~~

~~3. Activities and environments that:~~

~~a. Are not diversional in nature;~~

~~b. Provide active training or skill development designed to prepare a participant to transition from school to adult responsibilities, community integration, and work; and~~

~~c. Include:~~

~~(i) Skill development to communicate effectively with supervisors, co-workers, and customers;~~

~~(ii) Generally accepted community workplace conduct and dress;~~

~~(iii) Workplace problem solving skills and strategies;~~

~~(iv) General workplace safety; or~~

~~(v) Mobility training.~~

~~4. Activities that:~~

~~a. Occur over a defined period of time;~~

~~b. Occur in a variety of settings in the community and shall not be limited to fixed-site facilities;~~

~~c. Coordinate with any needed therapies in the participant's POC;~~

~~d. Result in an outcome that identifies a career direction and plan used to guide activities that result in the participant's achievement of competitive, integrated employment; and~~

~~e. Shall not be reimbursable if they are for the primary purpose of producing goods or performing services in a segregated setting where the participant is earning less than the customary wage and level of benefits paid by an employer for the same or similar work performed by individuals without disabilities;~~

~~5.~~] Supported retirement activities including:

a. Altering schedules to allow for more rest time throughout the day; or

b. Support to participate in hobbies, clubs, or other senior-related activities in the participant's community; or

4.[~~6. For a participant with a degenerative condition,~~] Training and supports designed to maintain skills and functioning and to prevent or slow regression, rather than acquiring new skills or improving existing skills;

(c) **Shall include required informational sessions sponsored by the provider at least annually for the participant regarding community involvement or employment services and arrangement of opportunities for the participant to explore community integration, supported employment, and other employment opportunities in the community;**

(d) Shall, if provided in an adult day health care center, only be available for a participant who:

1. Is at least twenty-one (21) years of age; and

2. Requires skilled nursing services or nursing supervision in a licensed adult day health care center as outlined in the participant's POC;

(e) Shall include environments that:

1. Are not diversional in nature;

2. Occur in a variety of settings in the community and shall not be limited to fixed-site facilities; and

3. Coordinate with any needed therapies in the participant's POC;

(f)[~~(d)~~] May be participant directed **and if participant directed, may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 5 of this administrative regulation;**

(g) Shall not be reimbursable if vocational in nature and for the primary purpose of producing goods or performing services;

(h)[~~;~~

~~(e) Shall include required informational sessions sponsored by the provider at least annually for the participant regarding employment services and arrangement of opportunities for the participant to explore supported employment and other customized employment opportunities in the community;~~

~~(f)~~] Shall include documentation that shall be:

1. A note for each contact which shall include:

a. A full description of each service rendered;

b. The date of the service;

c. The location of the service;

d. The beginning and ending times of the service;

e. The signature and title of the individual providing the service; and

f. The date the entry was made in the record; and

2. A completed monthly summary note which shall include:

a. The month and year for the time period the note covers;

b. An analysis of the efficacy of the service provided including recommendations and identification of additional support needs;

c. The signature and title of the individual completing the note; and

d. The date the note was written; and

(i)[~~(g)~~] Shall be limited to:

1. Five (5) days per week excluding weekends; and

2. 160 fifteen (15) minute units per week for day training alone or in combination with any **hours of paid community employment or on-site** supported employment service.

(10)(a) An environmental accessibility adaptation service:

1. Shall be:

a. Designed to enable participants to interact more independently with their environment thereby enhancing their quality of life and reducing their dependence on physical support from others; and

b. A physical adaptation to a participant's or family's home which shall be:

(i) Necessary to ensure the health, welfare, and safety of the participant; or

(ii) Enable the participant to function with greater independence in the home and without which the participant would require institutionalization;

2. May include the following if necessary for the welfare of a participant:

a. Installation of a ramp or grab-bar;

b. Widening of a doorway;

c. Modification of a bathroom facility; or

d. Installation of a specialized electric and plumbing system which shall be necessary to accommodate the medical equipment or supplies necessary for the welfare of the participant;

3. Shall not include:

a. An adaptation or improvement to a home which is not of direct medical or remedial benefit to a participant;

b. An adaptation that adds to the total square footage of a home except when necessary to complete an adaptation; and

c. An adaptation to a provider-owned residence;

4. Shall be provided:

a. In accordance with applicable state and local building codes; and

b. By a vendor who shall be in good standing with the Office of the Secretary of State of the Commonwealth of Kentucky pursuant to 30 KAR 1:010 and 30 KAR 1:020;

5. **[~~Shall not be provided by a family member who resides in the same house as the participant;~~**

~~6.~~] Shall be coordinated and documented by a case manager by:

a. A description of adaptation purchased;

b. A receipts for every adaptation made which shall include the:

(i) Date of purchase;

(ii) Description of the item;

(iii) quantity and per unit price; and

(iv) Total amount of the purchase;

c. The signature and title of the case manager; and

d. The date the entry was made in the record; and

6.[~~7.~~] Shall be limited to $8,000 per lifetime.

(b) **An immediate family member, guardian, or legally responsible individual of a participant shall not be eligible to be a vendor or provider of environmental accessibility service for the participant.**

(c) A home accessibility modification shall not be furnished to a participant who receives residential habilitation services except when the services are furnished in the participant's own home.

(d)[(~~c~~)] A request shall be documented in a participant's POC and include cost of adaptations.

(11)(a) Goods and services:

1. Shall be services, equipment, or supplies that are individualized to a participant who chooses to participant direct services;

2. Shall be utilized to reduce the need for personal care or to enhance independence within a participant's the home or community;

3. Shall not be a good or service available to a recipient outside of the department's SCL waiver program;

4. Shall meet the following requirements:

a. The good or service shall decrease the need for other Medicaid services;

b. The good or service shall promote participant inclusion in the community; or

c. The good or service shall increase a participant's safety in the home environment; and

d. The participant does not have the funds to purchase the good or service;

5. If participant directed and purchased from a participant directed budget, shall be prior authorized;

6. Shall not include experimental or prohibited treatments;

7. Shall be clearly linked to a participant need that has been documented in the participant's POC.

8. Shall be coordinated and documented by a case manager by:

a. Description or itemized line item of purchase and cost;

b. Receipts for procurements which include the date of purchase;

c. The signature and title of the case manager; and

d. The date the entry was made in the record; and

9. Shall not exceed $1,800 per one (1) year authorized POC period.

(b) A purchase of a good or service shall not circumvent other restrictions on SCL waiver services:

1. Established in this administrative regulation; and

2. Including the prohibition against claiming for the costs of room and board.

(c) **An immediate[~~An individual serving as the representative of a participant for whom the goods and services are being purchased shall not be eligible to be a provider of participant directed goods and services.~~**

~~(d) A~~] family member**, guardian, or legally responsible individual of a[~~who resides in the same house as the~~]** participant shall not be a provider of participant directed goods and services to the participant.

(e) A case manager shall submit **reimbursement** documentation to the financial management **[~~services~~]** agency**[~~to make a direct payments to the approved vendor of a good or service~~]**.

(f) Equipment purchased as a good shall become the property of the participant.

(12)(a) Natural supports training:

1. Shall be provided by **a qualified entity as identified in the POC[~~an SCL provider employee who meets the personnel and training requirements established in Section 3 of this administrative regulation~~]**.

2. Shall be participant directed **and include[~~;~~**

~~3. Shall include~~]:

a. Training and education to individuals who provide unpaid support, training, companionship, or supervision to participants;

b. Instruction about treatment regimens and other services specified in the participant's POC;

c. Instruction on current best practices;

d. The costs of registration and training fees associated with formal instruction in areas relevant to the participant's needs identified in the participant's POC; or

e. Training provided by a member of the participant's community regarding specific interests of the participant and how the natural support network shall support the participant's inclusion in activities and events surrounding the area of interest;

3. Shall be individualized, direct training of families and natural support networks for acquisition or enhancement of their ability to support the participant;

4. Shall relate to needs identified in a participant's person centered POC and be tied to a specific goal in the POC;

5. Shall not duplicate or occur simultaneously with any education or training provided through:

a. Physical therapy services;

b. Occupational therapy services;

c. Speech and language therapy services;

d. Consultative clinical and therapeutic services; or

e. Positive behavior support services;

6. **[~~Shall be provided by a vendor approved by DBHDID;~~**

~~7.~~] Shall be provided in:

a. A participant's own home or a participant's family's home; or

b. Community setting specific to community-based natural supports training goals specified in the participant's POC;

7.[~~8.~~] Shall not include:

a. Services reimbursable by any other support;

b. Training paid caregivers;

c. Costs of travel, meals, or overnight lodging to attend a training event or conference;

d. Services not related to the needs of the participant;

8.[~~9.~~] Shall be coordinated and documented by a case manager by:

a. The specific training provided:

b. The date and the beginning and ending time when the service was provided;

c. The service location;

d. The receipts or verification of service provision, including first and last name and title (if applicable) of the person providing the service and the signature of the person providing the service;

e. Verification of registration and certificate of attendance at any formal training; and

f. The progress made in moving the participant towards independence as reflected in goals and the participant's POC; and

9.[~~10.~~] Shall not exceed $1,000 per one (1) year authorized POC period.

(b) **An immediate[~~A~~]** family member**, guardian, or legally responsible individual[~~or designated representative~~]** of a participant shall not be eligible to be a participant directed provider of natural supports training services for the participant.

(c)**[~~An individual serving as a representative in participated directed services shall not be eligible to be a participant directed provider of natural supports training services.~~**

~~(d)~~] For purposes of natural supports training, an individual shall be defined as any person, family member, neighbor, friend, companion, or coworker who provides uncompensated care, training, guidance, companionship, or support to the participant who utilizes natural supports training.

(d)[~~(e)~~] A case manager shall submit **reimbursement** documentation to the financial management **[~~services~~]** agency**[~~to make direct payments or reimbursement to the DBHDID-approved vendor or unpaid caregiver~~]**.

(13) Occupational therapy shall:

(a) Be provided by an:

1.a. Occupational therapist who meets the personnel and training requirements established in Section 3 of this administrative regulation; or

b. Occupational therapy assistant who meets the personnel and training requirements established in Section 3 of this administrative regulation; and

2. Order of a physician;

(b) Be evaluation and therapeutic services that are not available to a participant outside of a 1915(c) home and community based waiver program:

(c) Include:

1. Evaluation of a participant and the participant's environment;

2. Therapeutic activities to improve functional performance;

3. Sensory integrative techniques to enhance sensory processing and promote adaptive responses to environmental demands; and

4. Participant and family education;

(d) Facilitate maximum independence by establishing life skills with an emphasis on safety and environmental adaptation to improve quality of life and increase meaning and purpose in daily living and community integration;

(e) Promote fine motor skills, coordination, sensory integration, and facilitate the use of adaptive equipment or other assistive technology;

(f) Include, as needed, coordination of program wide support addressing assessed needs, conditions, or symptoms affecting a participant's ability to fully participate in the participant's community;

(g) Include the development of a home treatment or support plan with training and technical assistance provided on-site to improve the ability of paid and unpaid caregivers to carry out therapeutic interventions;

(h) Be delivered in a participant's home or in the community as described in the participant's POC;

(i) Include monitoring:

1. Of the fidelity of data reporting and participant's POC implementation;

2. Of the effectiveness of the participant's POC;

3. Of the impact of the participant's POC on the participant, the participant's environment and system of supports; and

4. Which shall be conducted:

a. In the settings where the participant's POC is implemented; and

b. Through discussions and observations of people implementing the participant's POC; and

c. Through reporting data;

(j) Be documented by**[**~~:~~

~~1.~~**]** a note documenting each contact which shall include:

1.[~~a.~~**]** A full description of each service rendered;

2.[~~b.~~**]** Evidence of **progress toward the participant's outcome or outcomes;**

3. Identification of barriers to achievement of outcomes;

4. The project plan to achieve the next step in achievement of outcomes;

5.[~~the training or service to support the outcomes designated in the POC;~~

~~c.~~**]** The date of the service;

6.[~~d.~~**]** The location of the service;

7.[~~e.~~**]** The beginning and ending time of the service;

8.[~~f.~~**]** The signature and title of the person providing the service; and

9.[~~g.~~**]** The date the entry was made in the record; and

10.[~~2. A detailed monthly summary note which shall include:~~

~~a. The month and year for the time period the note covers;~~

~~b. Evidence of progress toward the participant's outcome or outcomes;~~

~~c. Identification of barriers to achievement of outcomes;~~

~~d. The projected plan to achieve the next step in achievement of outcomes;~~

~~e. The signature and title of the person completing the note;~~

~~f. The date the note was written; and~~

~~g.~~**]** The signature and title of the occupational therapist supervising the occupational therapy assistant and date of the documentation review as applicable;

(k) Not be available to a participant under the age of twenty-one (21);

(l) Not supplant an educational service available under the Individuals with Disabilities Education Act (20 U.S.C. 101 et seq.); and

(m) Be limited to fifty-two (52) fifteen (15) minute units per month.

(14)(a) Person centered coaching shall:

1. Be provided by a person centered coach who shall:

a. Operate independently of a residential or day training provider;

b. **Work under the direction of[**~~Be supervised by~~**]** a positive behavior support specialist **or other licensed professional** in the settings where the POC is implemented **[**~~and through discussions with and observations of the person centered coach implementing the plan and reporting data~~**]**; and

c. Meet the personnel and training requirements specified in Section 3 of this administrative regulation;

2. Be an individualized service to be utilized when a barrier challenges the success of a participant in achieving the participant's goals

3. Include:

a. The provision of training developed in conjunction with certified or licensed professionals from the participant's person centered team, to the participant, family, guardian, natural and paid supports on implementation of all or designated components of the participant's POC; and

b. Monitoring **[**~~and assessing~~**]**the effectiveness of person centered planning as demonstrated by the support system's implementation of the POC or designated components across the array of service settings and reporting of required and pertinent data; and

c. Data collection which shall be utilized by the participant's person centered team to modify the environment or POC as needed;

4. Not duplicate case management or any other service;

5. Not supplant an educational service available under the Individuals with Disabilities Education Act (20 U.S.C. 101 et seq.); and

6. Be limited to 1,320 fifteen (15) minute units per year.

(b) An individualized service shall be outcome-based with a plan for the gradual withdrawal of the services.

(c) A person centered coach shall not be considered as part of a staffing ratio, plan, or pattern.

(d) Documentation of a person centered coaching service shall include:

1.[~~a.~~**]** A note documenting each contact which shall include:

a.[~~(i)~~**]** A full description of each service rendered;

b.[~~(ii)~~**]** The date of the service;

c.[~~(iii)~~**]** The location of the service;

d.[~~(iv)~~**]** The beginning and ending time of the service;

e.[~~(v)~~**]** The signature and title of the individual providing the service;

f.[~~(vi)~~**]** The date the entry was made in the record; and

2.[~~b.~~**]** A completed monthly summary note which shall include:

a.[~~(i)~~**]** The month and year for the time period the note covers;

b. A summary[~~(ii) An analysis of the efficacy~~**]** of the service provided including recommendations and identification of additional support needs if any exist;

c.[~~(iii)~~**]** The signature and title of the individual completing the note;

d.[~~(iv)~~**]** The date the note was written; and

e.[~~(v)~~**]** The signature, title, and date of review of documentation by the positive behavior specialist **or other licensed professional directing the work of[**~~supervising~~**]** the person centered coach.

(15) Personal assistance services:

(a) Shall be provided by a direct support professional;

(b) Shall enable a participant to accomplish tasks that the participant normally would do for him or herself if the participant did not have a disability;

(c) Shall be available only to a participant who lives in the participant's own residence or in the participant's family residence;

(d) May be participant directed **and if participant directed, may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 5 of this administrative regulation[**~~if the participant chooses this option~~**]**;

(e) Shall include:

1. Hands-on assistance (performing a task for a participant);

2. Reminding, observing, guiding, or training a participant in activities of daily living;

3. Reminding, observing, guiding, or training a participant in independent activities of daily living;

4. Assisting a participant in managing the participant's medical care including making medical appointments and accompanying

the participant to medical appointments; or

5. Transportation, which is not otherwise available under the Medicaid Program, to access community services, activities, and appointments;

(f) Shall take place in a participant's home or in the community as appropriate to the participant's need;

(g) Shall not be available to a participant:

1. Receiving paid residential supports; or

2. Under the age of twenty-one (21) if medically necessary personal assistance is available as an Early and Periodic Screening, Diagnosis, and Treatment service;

(h) Shall not supplant an educational service available under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); and

(i) Shall be documented by:

1. A note for each contact which shall include:

a. A full description of each service rendered;

b. Evidence of training or service to support outcomes designated in the participant's POC as appropriate;

c. The date of the service;

d. The location of the service;

e. The beginning and ending time of the service;

f. The signature and title of the direct support professional providing the service; and

g. The date the entry was made in the record; and

2. A detailed monthly summary note which shall include:

a. The month and year for the time period the note covers;

b. Evidence of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcome or outcomes;

d. Projected plan to achieve the next step in achievement of outcome or outcomes;

e. The signature and title of the direct support professional completing the note;

f. The date the note was written; and

g. The signature, title, and date documentation reviewed by the direct support professional supervisor supervising the direct support professional.

(16) Physical therapy shall:

(a) Include evaluation or therapeutic services that are not available to a participant outside of a 1915(c) home and community based waiver program;

(b) Address physical therapy needs that result from a participant's developmental disability;

(c) Facilitate a participant's independent functioning or prevent progressive disabilities;

(d) Include:

1. Evaluation;

2. Therapeutic procedures;

3. Therapeutic exercises to increase range of motion and flexibility;

4. Participant or family education;

5. Assessment of a participant's environment;

6. If needed, development of a home treatment or support plan with training and technical assistance provided on-site to improve the ability of paid and unpaid caregivers to carry out therapeutic interventions;

7. As needed, coordination of program wide support addressing assessed needs, conditions, or symptoms affecting a participant's ability to fully participate in the community;

8. Monitoring:

a. Of the fidelity of data reporting and participant's POC implementation;

b. Of the effectiveness of the participant's POC;

c. Of the impact of the participant's POC on the participant, the participant's environment and system of supports; and

d. Which shall be conducted:

(i) In the settings where the participant's POC is implemented; and

(ii) Through discussions and observations of people implementing the participant's POC; and

(iii) Through reporting data;

(e) Be provided by:

1.a. A physical therapist who meets the personnel and training requirements established in Section 3 of this administrative regulation; or

b. A physical therapist assistant who meets the personnel and training requirements established in Section 3 of this administrative regulation; and

2. An order of a physician;

(f) Be delivered in a participant's home or in the participant's community as described in the participant's POC;

(g) Not be available to a participant under the age of twenty-one (21) years;

(h) Not supplant educational services available under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.);

(i) Be documented by**[:**

~~**1.**~~**]** a note documenting each contact which shall include:

1.[~~**a.**~~**]** A full description of each service rendered;

2.[~~**b.**~~**]** Evidence of **progress toward the participant's outcome or outcomes;**

3. Identification of barriers to achievement of outcomes;

4. The projected plan to achieve the next step in achievement of outcomes;

5.[~~**the training or service to support the outcomes designated in the POC;**~~

~~**c.**~~**]** The date of the service;

6.[~~**d.**~~**]** The location of the service;

7.[~~**e.**~~**]** The beginning and ending time of the service;

8.[~~**f.**~~**]** The signature and title of the person providing the service; and

9.[~~**g.**~~**]** The date the entry was made in the record; and

10.[~~**2. A detailed monthly summary note which shall include:**~~

~~**a. The month and year for the time period the note covers;**~~

~~**b. Evidence of progress toward the participant's outcome or outcomes;**~~

~~**c. Identification of barriers to achievement of outcomes;**~~

~~**d. The projected plan to achieve the next step in achievement of outcomes;**~~

~~**e. The signature and title of the person completing the note;**~~

~~**f. The date the note was written; and**~~

~~**g.**~~**]** The signature and title of the physical therapist supervising the physical therapist assistant and date of the documentation review as applicable; and

(j) Be limited to fifty two (52) fifteen (15) minute units per month.

(17)(a) Positive behavior supports shall include:

1. The utilization of evidenced based and best practices in behavioral techniques, interventions, and methods to assist a participant with significant, intensive challenges which interfere with activities of daily living, social interaction, or work;

2. Evidenced based or best practices regarding treatment of a behavioral health condition which shall be the primary support services when supplemental behavioral interventions are needed; and

3. A positive behavior support plan which shall:

a. Be clearly based upon the information, data collected, and recommendations from the functional assessment;

b. Meet the primary purpose of having the participant acquire or maintain skills for community living while behavioral interventions are delivered for the reduction of significant challenges which interfere with activities of daily living, social interaction, or work;

c. Be developed with the participant and participant's person centered team;

d. Be related to goals of interventions, such as greater participation in activities, enhanced coping or social skills;

e. Include all the positive behavior support components specified in the Supports for Community Living Policy Manual;

f. Be revised whenever necessary; and

g. Be implemented across service settings by the various people, both paid and natural supports, assisting a participant to reach the participant's goals and dreams.

(b) Positive behavior supports shall be provided by a positive behavior support specialist who meets the personnel and training requirements established in Section 3 of this administrative regula-

tion.

(c) Behavioral health treatment and positive behavioral supports shall be utilized in a collaborative manner.

(d) One (1) unit of positive behavior supports shall equal one (1) plan.

(e) Positive behavior supports shall be billed in accordance with 907 KAR 12:020.

(18) Residential support services shall:

(a) Be authorized for a participant based upon information from the participant's Supports Intensity Scale assessment, Health Risk Screening Tool assessment, and approved person centered POC;

(b) Include:

1. Level I residential supports;

2. Technology assisted level I residential supports; or

3. Level II residential supports; and

(c) Be documented by a:

1. Daily note which shall include:

a. Information about how a participant spent the day including any effort toward meeting any outcome identified in the participant's POC;

b. The date of the service;

c. The location of the service;

d. The signature and title of the individual providing the service; and

e. The date the entry was made in the record;

2. Detailed monthly summary note which shall include:

a. The month and year for the time period covered by the note;

b. An analysis of progress toward a participant's outcome or outcomes;

c. A projected plan to achieve the next step in achievement of an outcome or outcomes;

d. Information regarding events that occurred that had an impact on a participant's life;

e. The signature and title of the individual writing the note;

f. The date the note was written;

g. The signature, title, and date of documentation review by the direct support professional supervisor providing supervision to the direct support professional.

(19)(a) Level I residential supports shall:

1. Be furnished in a provider-owned or leased residence which complies with the Americans with Disabilities Act based upon the needs of each participant receiving a support in the residence;

2. Be for a participant who requires a twenty-four (24) hour a day, intense level of support; and

3. Include no more than five (5) unsupervised hours per day per participant:

a. To promote increased independence;

b. Which shall be based on the:

(i) Needs of the participant as determined by the participant's person centered team; and

(ii) Participant's POC;

4. Include:

a.[~~(i)~~] Adaptive skill development;

b.[~~(ii)~~] Assistance with activities of daily living including bathing, dressing, toileting, transferring, or maintaining continence;

c.[~~(iii)~~] Community inclusion;

d.[~~(iv)~~] Adult education supports;

e.[~~(v)~~] Social and leisure development;

f.[~~(vi)~~] Protective oversight or supervision;

g.[~~(vii)~~] Transportation;

h.[~~(viii)~~] Personal assistance; and

i.[~~(ix)~~] The provision of medical or health care services that are integral to meeting the participant's daily needs; and

5. Be outlined in a participant's POC.

(b) Level I residential supports shall be provided by a:

1. Staffed residence which:

a. Has been certified:

(i) By the department to be an SCL waiver provider; and

(ii) By DBHDID to provide level I residential supports; and

b. Shall have no more than three (3) participants receiving publicly-funded supports in a home leased or owned by the provider;

2. Group home which:

a. Has been certified:

(i) By the department to be an SCL waiver provider; and

(ii) By DBHDID to provide level I residential supports; and

b. Shall have no more than eight (8) participants in the group home.

(c)1. For a participant approved for unsupervised time, a safety plan shall be included in the participant's POC based upon the participant's assessed needs.

2. A participant's case manager and other person centered team members shall ensure that a participant is able to implement a safety plan.

3. A participant's case manager shall provide ongoing monitoring of the safety plan, procedures, or assistive devices required by a participant to ensure relevance, the participant's ability to implement the safety plan, and the functionality of the devices if required.

(d) If a participant experiences a change in support needs or status, the participant's person centered team shall meet to make the necessary adjustments in the:

1. Participant's POC; and

2. Residential services to meet the participant's needs.

(e) A level I residential support provider shall employ staff who shall be a:

1. Direct support professional; or

2. Direct support professional supervisor if providing supervision.

(20)(a) Technology assisted residential services shall:

1. Be furnished in a provider-owned or leased residence:

a. Which complies with the Americans with Disabilities Act based upon the needs of each participant receiving a support in the residence; and

b. To three (3) or fewer participants who previously resided in the residence with twenty-four (24) hour staff support;

2. Be for a participant who:

a. Requires up to twenty-four (24) hour a day of support; and

b. Is able to increase his or her level of independence with a reduced need for onsite staff;

3. Include, to the extent required for a participant:

a. Protective oversight or supervision;

b. Transportation;

c. Personal assistance; or

d. The provision of medical or health care services that are integral to meeting the participant's daily needs;

4. Increase a participant's independence without undue risk to the participant's health or safety;

5. Be a real-time monitoring system with a two (2) way method of communication linking a participant to a centralized monitoring station; and

6. Be allowed to include:

a. An electronic sensor;

b. A speakers or microphone;

c. A video camera which shall not be located in a bedroom or a bathroom;

d. A smoke detector; or

e. A personal emergency response system.

(b)1. A device listed in paragraph (a)6. of this subsection shall link a participant's residence to remote staff employed to provide electronic support.

2. A technology assisted residential service provider shall have a plan established to ensure that staff is available twenty-four (24) hours a day, seven (7) days a week for a participant or participants receiving services from the provider.

(c) Technology shall be used by the technology assisted residential service provider to assist a participant in residing in the most integrated setting appropriate to the participant's needs.

(d) The level and types of technology assisted residential services provided to a participant shall be:

1. Determined by a participant's person centered team; and

2. Outlined in a participant's POC.

(e) A participant's person centered team shall give careful consideration to the participant's medical, behavioral, and psychiatric condition in determining the level and types of technology assisted residential services needed for a participant.

(f) The use of technology to reduce a participant's need for residential staff support in a residence may be utilized if there is an

individualized person centered POC which has been developed to promote a participant's increased independence:

1. Based on the participant's needs as indicated in the scores and results of the Supports Intensity Scale assessment and Health Risk Screening Tool assessment; and

2. As recommended by the participant's person centered team.

(g)1. If a participant experiences a change in support need or status, the technology assisted residential service provider shall:

a. Immediately adjust the participant's supervision to meet any acute need of the participant; and

b. Reassess the appropriateness of technology assisted residential services and make any adjustment, if needed, to meet any chronic support need of the participant.

2. Any adjustment shall be made in collaboration with the participant's case manager and person centered team if the adjustment is to be implemented for a period longer than what was determined by the participant's person centered team when developing the participant's POC.

(h) A technology assisted residential service provider shall:

1. Be responsible for arranging or providing a participant's transportation between the participant's residence and any other service site or community location;

2. Employ staff who:

a. Shall be a:

(i) Direct support professional; or

(ii) Direct support professional supervisor if providing supervision; and

b. Demonstrate:

(i) Proficiency in the individual's ability to operate all monitoring devices utilized in technology assisted residential services; and

(ii) The ability to respond appropriately to the needs of participants in a timely manner; and

3. Have daily contact with a participant.

(21)(a) Level II residential supports shall:

1. Be for a participant who requires up to a twenty-four (24)-hour level of support;

2. Be a support tailored to a participant to assist the participant with acquiring, retaining, or improving skills related to living in a community;

3. Be designed and implemented to assist a participant to reside in the most integrated setting appropriate to the participant's needs;

4. Provide support for a participant up to twenty-four (24) hours a day; and

5. Be furnished in:

a. An adult foster care home;

b. A family home provider; or

c. A participant's own home;

(b) Level II residential supports shall be provided by:

1. An adult foster care provider which:

a. Has been certified:

(i) By the department to be an SCL waiver provider; and

(ii) By DBHDID to provide level II residential supports; and

b. Shall have no more than three (3) participants who are:

(i) Aged eighteen (18) years or older; and

(ii) Receiving publicly-funded supports and living in the home; or

2. A family home provider which:

a. Has been certified:

(i) By the department to be an SCL waiver provider; and

(ii) By DBHDID to provide level II residential supports; and

b. Shall have no more than three (3) participants receiving publicly-funded supports living in the home.

(c) A level II residential support provider shall employ staff who shall be a:

1. Direct support professional; or

2. Direct support professional supervisor if providing supervision.

(d) If a participant experiences a change in support need or status, the level II residential services provider shall adjust services provided to the participant to meet the participant's altered need or status.

(22) Respite:

(a) Shall:

1. Be provided to a participant who:

a. Does not receive residential services;

b. Resides in the participant's own home or family's home; and

c. Is unable to independently administer self-care;

2. Be provided:

a. In a variety of settings;

b. By a direct support professional**[~~who meets the personnel and training requirements established in Section 3 of this administrative regulation~~]**; and

c. On a short-term basis due to the absence or need for relief of an individual providing care to a participant;

3. Documented by a contact note which shall include:

a. The date of the service;

b. The beginning and ending time of the service;

c. A full description of each service rendered;

d. The signature and title of the individual providing the service; and

e. The date the entry was made in the record; and

4. Not exceed 830 hours per calendar year; and

(b) May be participant directed **and if participant directed, may be provided by an immediate family member or guardian of the participant in accordance with Section 5 of this administrative regulation**.

(23)(a) Shared living shall be a participant directed service designed to:

1. Be an alternative to residential support services; **and**

2. **Be provided by a shared living caregiver who[~~Allow a participant to live in the participant's own home with an unrelated caregiver who:~~**

~~a. Resides in the participant's home with the participant; and~~

~~b.~~] provides some of the participant's supports in exchange for the caregiver's share of room and board expenses.

(b) A payment for the portion of the costs of rent or food attributable to an unrelated personal caregiver shall be routed through the financial management agency specifically for reimbursing the participant.

(c) If two (2) participants choose to live together in a home, the two (2) may share a caregiver.

(d) Depending upon the need of a participant, a caregiver may provide:

1. Assistance with the acquisition, retention, or improvement in skills related to activities of daily living; or

2.[~~b.~~] Supervision required for safety or the social and adaptive skills necessary to enable the participant to reside safely and comfortably in the participant's own home.

(e) Shared living services shall:

1. Address a participant's needs identified in the participant's person centered planning process;

2. Be outlined in the participant's POC;

3. Be specified in a contractual agreement between the participant and the caregiver; and

4. Complement other services the participant receives and enhance increased independence for the participant.

(f) A participant's person centered team shall decide and ensure that the individual who will serve as the participant's caregiver has the experience, skills, training, and knowledge appropriate to the participant and the type of support needed.

(g) A participant's caregiver shall meet direct support professional qualifications in accordance with Section **1(24)[~~1(26)~~]** of this administrative regulation.

(h) Room and board expenses for an unrelated caregiver living with a participant shall be:

1. Reflected in the participant's person centered POC; and

2. Specified in the contractual agreement between the participant and the caregiver.

(i) A payment shall not be made if a participant lives in the caregiver's home or in a residence that is owned or leased by an SCL provider.

(j) Documentation shall:

1. Be maintained by a participant's case manager; and

2. Include:

a. A dated monthly summary note that is written by the case manager and details how services were provided according to the

contractual agreement and the participant's person centered POC;

b. A monthly receipt for the caregiver's room and board expenses that were reimbursed to the participant;

c. The signature and title of the case manager writing the note;

d. The date the note was written;

e. A signed and dated statement from the participant or the participant's **guardian[~~designated representative~~]** indicating that the participant is satisfied with the services provided by the caregiver; and

f.[~~h.~~] The signature, title and date of documentation review by the case manager supervisor who is supervising the case manager.

(k) Shared living shall not exceed $600 per month.

(24)(a)Specialized medical equipment and supplies shall:

1. Include a device, control, or appliance specified in a participant's POC which shall:

a. Be necessary to ensure the health, welfare, and safety of the participant; or

b. Enable the participant to function with greater independence in the home;

2. Include assessment or training needed to assist a participant with mobility, seating, bathing, transferring, security, or other skills including operating a wheelchair, a lock, a door opener, or a side lyre;

3. Include a computer necessary for operating communication devices, a scanning communicator, a speech amplifier, a control switch, an electronic control unit, a wheelchair, a lock, a door opener, or a side lyre;

4. Include customizing a device to meet a participant's needs;

5. Include partial nutrition supplements, special clothing, an enuresis protective chuck; or another authorized supply that is specified in the participant's POC;

6. Include an ancillary supply necessary for the proper functioning of an approved device;

7. Be identified in a participant's POC;

8. Be recommended by one of the following personnel whose signature shall verify the type of specialized equipment or supply that is necessary to meet the participant's need:

a. An occupational therapist who meets the personnel and training requirements established in Section 3 of this administrative regulation;

b. A physical therapist who meets the personnel and training requirements established in Section 3 of this administrative regulation;

c. A speech therapist who meets the personnel and training requirements established in Section 3 of this administrative regulation; or

d. A certified or licensed practitioner whose scope of practice includes the evaluation and recommendation of specialized equipment or supplies;

9. Not include equipment, a supply, an orthotic, prosthetic, service, or item covered under the department's:

a. Durable medical equipment program pursuant to 907 KAR 1:479;

b. Hearing services program pursuant to 907 KAR 1:038 or 907 KAR 1:039; or

c. EPSDT program pursuant to 907 KAR 11:034 or 907 KAR 11:035;

10. Be coordinated and documented by a case manager by:

a. A description or itemized line item of purchase and cost;

b. Receipts for procurements which include the date of purchase;

c. The signature and title of the case manager;

d. The date the entry was made in the record; and

e. The signature, title, and date of the documentation review by the case manager supervisor providing supervision to the case manager.

(b) Equipment purchased pursuant to this subsection for a participant shall become the property of the participant.

(25) Speech therapy which shall:

(a) Be provided by:

1. A speech language pathologist who meets the personnel and training requirements established in Section 3 of this administrative regulation; and

2. An order of a physician;

(b) Include:

1. Include evaluation or therapeutic services that are not available to a participant outside of a 1915(c) home and community based waiver program;

2. Speech and language therapy evaluation;

3 Individual treatment of voice;

4. Communication;

5. Auditory processing;

6. Therapeutic services for the use of speech-device including:

a. Programming and modification; or

b. Participant and family education;

7. Development of a home treatment or support plan with training and technical assistance provided on site to improve the ability of paid and unpaid caregivers to carry out therapeutic interventions;

8. As needed, coordination of program-wide support addressing assessed needs, conditions, or symptoms affecting a participant's ability to fully participate in the participant's community;

9. Monitoring:

a. Of the fidelity of data reporting and participant's POC implementation;

b. Of the effectiveness of the participant's POC;

c. Of the impact of the participant's POC on the participant, the participant's environment and system of supports; and

d. Which shall be conducted:

(i) In the settings where the participant's POC is implemented; and

(ii) Through discussions and observations of people implementing the participant's POC; and

(iii) Through reporting data;

(c) Preserve abilities for independent function in communication, motor and swallowing functions, facilitate use of assistive technology, and prevent regression;

(d) Be delivered in a participant's home or in the participant's community as described in the participant's POC;

(e) Not be available to a participant under the age of twenty-one (21) years;

(f) Not supplant educational services available under the IDEA (20 U.S.C. 1401 et seq.); and

(g) Be documented by**[~~:~~**

~~1.~~] a note documenting each contact which shall include:

1.[~~a.~~] A full description of each service rendered;

2.[~~b.~~] Evidence of **progress toward the participant's outcome or outcomes;**

3. Identification of barriers to achievement of outcomes;

4. The projected plan to achieve the next step in achievement of outcomes;

5.[~~training or service to support an outcome or outcomes designated in the participant's POC;~~

~~c.~~] The date of the service;

6.[~~d.~~] The location of the service;

7.[~~e.~~] The beginning and ending time of the service;

8.[~~f.~~] The signature and title of the speech language pathologist providing the service; and

9.[~~g.~~] The date the entry was made in the record; and**[~~2. A detailed monthly summary note which shall include:~~**

~~a. The month and year for the time period the note covers;~~

~~b. Evidence of progress toward the participant's outcome or outcomes;~~

~~c. Identification of any barrier to achievement of an outcome or outcomes;~~

~~d. The projected plan to achieve the next step in an achievement of an outcome or outcomes;~~

~~e. The signature and title of the speech language pathologist completing the note; and~~

~~f. The date the note was written; and~~]

(h) Be limited to fifty-two (52) fifteen (15) minute units per month.

(26)(a) Supported employment shall be funded by the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401 et seq.) for a participant if funding is available under either act for the participant.

(b) If the funding referenced in paragraph (a) of this paragraph

is not available for a participant, SCL waiver funding may be accessed for the participant for all defined supported employment services when there has been no change in the impact of the participant's disability on the participant's employment.

(c) Supported employment shall:

1. Be covered for a participant if no change in the impact of a participant's disability on the participant's employment has occurred and:

a. A Long-Term Employment Support Plan has been completed and incorporated into the participant's person centered POC; or

b. There is documentation of the payment of the supported employment individual outcome placement fee indicating closure of the case by the Office of Vocational Rehabilitation;

2. Be participant directed, if a participant chooses this option;

3. Be provided:

a. In a variety of settings;

b. By a supported employment specialist who:

(i) Meets the personnel and training requirements established in Section 3 of this administrative regulation; and

(ii) Works for an SCL certified provider that is a vendor of supported employment services for the Office of Vocational Rehabilitation;

c. In accordance with the supported employment policies stated in the current Supports for Community Living Policy Manual**.[and using the documentation forms specified in the Supports for Community Living Policy Manual]**

4. Be delivered on a one (1) to one (1) basis with a participant or indirectly on behalf of a participant;

5. Exclude work performed directly for the supported employment provider or other service provider; **and**

6. Be coordinated with other applicable 1915(c) home and community based waiver services, if applicable, in support of the participant's employment outcome**[; and**

7. Be documented as required in the Supports for Community Living Policy Manual].

(d) Supported employment services delivered on a one-to-one basis and the hours spent by a participant performing paid employment and adult day training shall not exceed:

1. Forty (40) hours; or

2. 160 units per week.

(e) A supported employment service shall be **provided and** documented **[in accordance with the Supports for Community Living Policy Manual and]** as follows:

1. A Person Centered Employment Plan shall be completed by a participant's supported employment specialist and updated as needed as required in the Supports for Community Living Policy Manual;

2. A Supported Employment Long-Term Support Plan shall be completed by a participant's supported employment specialist and updated as needed as required in the Supports for Community Living Policy Manual;

3. A Person Centered Employment Plan Activity Note, notes regarding a participant's job development activity, notes regarding a participant's job acquisition or stabilization activity, and notes regarding a participant's long-term employment support activity shall:

a. Be completed by a participant's supported employment specialist to document each contact with the participant or action provided on behalf of the participant; and

b. Contain:

(i) The date of the service;

(ii) The beginning time of the service;

(iii) The ending time of the service;

(iv) A description of the activity that was conducted;

(v) The justification of the activity;

(vi) The results of the activity;

(vii) The anticipated content of the next activity;

(viii) The signature of the supported employment specialist who provided the service.

(27)(a) A transportation service shall:

1. Enable a participant who chooses to participant direct services to gain access to integrated waiver and other community services, activities, resources, and organizations typically utilized by the general population; and

2. Only be provided when transportation is not:

a. Otherwise and customarily available through natural supports including family, friends, neighbors, or community agencies; or

b. Included as an element of another SCL waiver service;

3. Include nonemergency travel;

4. Be clearly described in a participant's POC which shall include information regarding the unavailability of other transportation services or resources;

5. Be reimbursable based upon the assessed needs of a participant as specified in the participant's POC;

6. Be provided by a driver who:

a. Is at least eighteen (18) years of age and legally licensed **[by the Commonwealth of Kentucky]** to operate the transporting vehicle to which the individual is assigned or owns;

b. Has a proof of current liability insurance for the vehicle in which the participant will be transported; and

c. Is **an individual[a neighbor, friend,]** or other public transit resource including a local cab or bus service; and

7. Not:

a. Include transporting a participant to school **([**through the twelfth grade**)[]**];

b. Be available to a participant who:

(i) Receives transportation as an element of another covered service;

(ii) Is receiving a residential service via the SCL waiver program;

(iii) Has access to transportation under the Individuals with Disabilities Education Act; or

(iv) Customarily receives transportation from a relative.

(b) A participant shall not contract with an individual to provide transportation if the individual has a driving under the influence conviction within the past twelve (12) months.

(c) **A transportation service may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 5 of this administrative regulation.**

(d) A case manager shall:

1. Coordinate transportation services; and

2. Ensure that the following documentation is completed and submitted to the financial management **[services]**agency for direct payment to the approved vendor:

a. The specific type and purpose of transportation provided;

b. The date and the beginning and ending time when the service was provided;

c. The location of origin of the transportation service, destination of the transportation service, and the mileage incurred from point to point;

d. Verification of service delivery, including the first and last name and title (if applicable) of the individual providing the service; and

e. A receipt from the driver if a bus, taxicab, or similar type of transportation service in which the participant directly purchases the service is utilized.

(28)(a) A vehicle adaptation shall:

1. Be a device, control, or service that enables a participant to:

a. Increase the participant's independence and physical safety; and

b. Interact more independently with the participant's environment and reduce the participant's dependence on physical support from others;

2. Be made to a participant's or a participant's family's privately owned vehicle;

3. Include

a. A hydraulic lift;

b. A ramps

c. A special seat; or

d. An interior modification to allow for access into and out of the vehicle as well as safety while the vehicle is moving;

4. Be limited to $6,000 per five (5) years per participant;

5. Be prior authorized by the department in order to be reimbursable by the department; and

6. Be coordinated and documented by a case manager by:

a. Documenting an estimate from a vendor determined to be

qualified to complete vehicle modifications by the Office of Vocational Rehabilitation;

b. Documentation from the Office of Vocational Rehabilitation that the participant is not qualified to receive a vehicle modification from the Office of Vocational Rehabilitation;

c. A description or itemized line item of purchase and cost;

d. A receipt for procurements which shall include the date of purchase;

e. Verification by the case manager that the work is complete, adequate, and satisfactory within ten (10) business days of completion before payment is requested and issued;

f. The signature and title of the case manager; and

g. The date the entry was made in the record.

(b) The department's SCL program shall be the payer of last resort for a vehicle adaptation.

(c) The need for a vehicle adaptation shall:

1. Be documented in a participant's person centered POC;

2. Include an assessment from an occupational therapist or physical therapist specializing in vehicle modifications that result in specific recommendations for the type of modification to meet the needs of the participant.

(d) The department shall not reimburse for the repair or replacement costs of a vehicle adaptation of a vehicle owned by an SCL provider.

(e) A vehicle adaptation vendor shall be in good standing with the Office of the Secretary of State of the Commonwealth of Kentucky pursuant to 30 KAR 1:010 and 30 KAR 1:020.

(f) **An immediate family member, guardian, or legally responsible individual of the participant shall not be eligible to be a vendor or provider of a vehicle adaptation service for the participant[**~~A family member living in the home of a participant shall not be reimbursed by the department for a vehicle adaptation provided to the participant~~**]**.

(g) A **[**~~vehicle adaptation~~

~~(h) A~~**]**case manager shall submit **reimbursement** documentation to the financial management **[**~~services~~**]** agency**[**~~to make a direct payment to the approved vendor for a participant who has chosen to participant direct a vehicle adaptation~~**]**.

Section 5. Participant Directed Services (PDS). (1)(a) The **following** services **[**~~listed in paragraph (c) of this subsection~~**]**may be participant directed and shall be provided in accordance with the specifications and requirements established in Section 4 of this administrative regulation**.[**~~and~~**]** the Supports for Community Living Policy Manual**, and the training requirements specified in paragraph (b) of this subsection.**

1.[~~(b) An individual who provides a service listed in paragraph (c) of this subsection shall meet the provider qualification requirements for the respective service in accordance with Section 4 of this administrative regulation.~~

~~(c)1.~~**]** Community access services.

2. Community guide services.

3. Day training.

4. Personal assistance services.

5. Respite.

6. Shared living.

7. Supported employment.

(b) An individual who provides a participant directed service shall complete the following training requirements within six (6) months of the date of hire or of the date the individual began providing the service:

1. First aid and cardiopulmonary resuscitation certification by the American Red Cross or the American Heart Association;

2. If administering or monitoring the administration of a medication, an approved DBHDID medication administration curriculum;

3. Individualized instruction regarding the participant receiving a support;

4. The following areas of the Kentucky College of Direct Support modules:

a. Maltreatment of vulnerable adults and children;

b. Individual rights and choice;

c. Safety at home and in the community;

d. Supporting healthy lives;

e. Person centered planning; and

5. Other training if required by the participant.

(2) An individual providing a participant directed service to more than three (3) participants in the same household or different households, shall complete all provider training requirements as specified in Section 3 of this administrative regulation.

(3)(a) The following services may be participant directed and shall be provided in accordance with the specifications and requirements established in the Supports for Community Living Manual and in Section 4 of this administrative regulation:

1. Environmental accessibility adaptation services;

2. Goods and services;

3. Natural supports training;

4. Transportation services; or

2. Vehicle adaptation services.

(b) A participant directed service shall not be available to a participant who resides in a living arrangement, regardless of funding source, that is furnished to four (4) or more individuals who are unrelated to the proprietor.

(4) An immediate[~~(2) The following services may be participant directed and shall be provided in accordance with the specifications and requirements stated in Section 4 of this administrative regulation:~~

~~(a) Environmental accessibility adaptation services;~~

~~(b) Goods and services;~~

~~(c) Natural supports training;~~

~~(d) Transportation services; or~~

~~(e) Vehicle adaptation services.~~

~~(3) A~~**]** family member or guardian of a participant may provide a support to a participant directed service if:

(a) Allowed to do so pursuant to Section 4 of this administrative regulation;

(b) The family member or guardian has the unique abilities necessary to meet the needs of the participant;

(c) The service is not something normally provided by the family member or guardian to the participant;

(d) **[**~~The family member or guardian meets the training requirements established in Section 3 of this administrative regulation for the service;~~

~~(e)~~**]** Delivery of the service by the family member or guardian is cost effective;

(e)[~~(f)~~**]** The use of the family member or guardian is age and developmentally appropriate;

(f)[~~(g)~~**]** The use of the family member or guardian enables the participant to:

1. Learn and adapt to different people; and

2. Form new relationships;

(g)[~~(h)~~**]** The participant learns skills to increase independence;

(h)[~~(i)~~**]** Having the family member or guardian provide the service:

1. Truly reflects the participant's wishes and desires;

2. increases the participant's quality of life in measurable ways;

3. Increases the participant's level of independence;

4. Increases the participant's choices; and

5. Increases the participant's access to the amount of service hours for needed support; and

(i)1.[~~(j)1.~~**]** There is no qualified provider within thirty (30) **miles[**~~minutes~~**]** from the participant's residence; or

2. There is no qualified provider who can furnish the service at the necessary times and places.

(5)[~~(4)~~**]** A legally responsible individual may provide a service to a participant if:

(a) Allowed to do so pursuant to Section 4 of this administrative regulation;

(b) The legally responsible individual meets the requirements established for a family member or guardian in subsection (3) of this section;

(c) The service exceeds the range of activities that a legally responsible individual would ordinarily provide in a household on behalf of a person:

1. Without a disability; and

2. Of the same age; and

(d) The service is necessary to:

1. Assure the health and welfare of the participant; and

2. Avoid institutionalization.

(6) An individual serving as a representative for a participant shall not be eligible to provide a waiver service to the participant.[~~(5)(a) An individual who provides a participant directed service shall complete the following training requirements within six (6) months of the date of hire or of the date the individual began providing the service:~~

~~1. First aid and cardiopulmonary resuscitation certification by the American Red Cross or the American Heart Association;~~

~~2. If administering or monitoring the administration of a medication, an approved DBHDID medication administration curriculum;~~

~~3. Individualized instruction regarding the participant receiving a support;~~

~~4. The following areas of the Kentucky College of Direct Support modules:~~

~~a. Maltreatment of vulnerable adults and children;~~

~~b. Individual rights and choice;~~

~~c. Safety at home and in the community;~~

~~d. Supporting healthy lives;~~

~~e. Person centered planning; and~~

~~5. Other training if required by the participant.~~

~~(b) The Kentucky College of Direct Support modules training listed in subparagraph 4. of paragraph (a) shall be paid for and facilitated by DBHDID.~~

~~(6) A contracted employee or an individual employed by an agency providing a participant-directed support to more than three (3) participants in the same household or different households, shall complete all provider training requirements as specified in Section 3 of this administrative regulation.~~]

(7) A participant directed reimbursement service shall be provided by a financial management agency with whom the department contracts that shall:

(a) Only pay for service identified and prior authorized in a participant's POC;

(b) Ensure compliance with all Internal Revenue Service regulations, United States Department of Labor regulations, and Kentucky Department of Workers' Claims regulations regarding workers' compensation;

(c) Process employer-related payroll and deposit and withhold necessary mandatory employer withholdings;

(d) Receive, disburse, and track public funds based on a participant's approved POC;

(e) Provide:

1. A participant and the participant's case manager with payroll reports semi-monthly;

2. Additional payroll information to a participant's case manager on a per request basis; and

3. Reports to DBHDID.

(8)(a) A participant may voluntarily disenroll from a participant directed service at any time.

(b) If a participant elects to disenroll from a participant directed service, the participant's case manager shall assist the participant and the participant's **guardian[~~designated representative~~]** to locate a traditional waiver service provider of the participant's choice to provide the service.

(c) A participant directed service shall not be terminated until a traditional service provider is ready to provide the service.

(9)(a) If case management monitoring reveals that a participant's health, safety, or welfare is being jeopardized, the participant's case manager shall:

1. Develop a corrective action plan in conjunction with the participant, the participant's guardian, and any other person centered team member**[~~if any other individual is on the team~~]**; and

2. Monitor the progress of the corrective action plan and resulting outcomes to resolve the health, safety, or welfare issue.

(b) If the health, safety, or welfare issue referenced in paragraph (a) of this subsection is not resolved, the participant's case manager, in conjunction with**[~~the participant and~~]** the participant's person centered team members, shall assist the participant to locate a traditional waiver service provider of the participant's choice to provide the service.

(c) A participant directed service shall not be terminated until a traditional service provider is ready to provide the service.

(10) Documentation of a participant directed service shall include:

(a) A timesheet; and

(b) A note documenting each contact which shall include:

1. A full description of each service provided to support an outcome or outcomes in the participant's POC;

2. The date of the service;

3. The location of the service;

4. The beginning and ending time of the service;

5. The signature and title of the person providing the service; and

6. The date the entry was made in the record; and

(c) Any applicable form for each service in accordance with Section 4 of this administrative regulation.

Section 6. Incident Reporting Process. (1) The following shall be the two (2) classes of incidents:

(a) An incident; or

(b) A critical incident.

(2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:

(a) A minor injury;

(b) A medication error without a serious outcome;

(c) A behavior or situation which is not a critical incident.

(3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:

(a) Can reasonably be expected to result in harm to a participant; and

(b) Shall include:

1. Abuse, neglect, or exploitation;

2. A serious medication error;

3. Death;

4. A homicidal or suicidal ideation;

5. A missing person; or

6. Other action or event.

(4)(a) An incident shall:

1. Be documented on an Incident Report; and

2. Be immediately assessed for potential abuse, neglect, or exploitation.

(b) If an assessment of an incident indicates the potential for abuse, neglect, or exploitation exists:

1. The individual who discovered or witnessed the incident shall immediately act to ensure the health, safety, or welfare of the at-risk participant;

2. The incident shall immediately be considered a critical incident;

3. The critical incident procedures established in subsection (5) of this section shall be followed;

4. The SCL provider shall report the incident to the participant's case manager and participant's **guardian[~~designated representative~~]** within twenty-four (24) hours of discovery of the incident;

5. The witness of the incident or discovery agency employee or volunteer shall record details of the incident on an Incident Report form;

6. A completed Incident Report form shall be retained on file by the SCL provider; and

7. A copy of the completed Incident Report form shall be provided to the case management agency providing case management to the participant.

(5) If a critical incident occurs:

(a) The individual who witnessed the critical incident or discovered the critical incident shall:

1. Immediately act to ensure the health, safety, and welfare of the at-risk participant;

2. Immediately report the critical incident to:

a. The Department for Community Based Services, Adult Protective Services Branch or Child Protective Services Branch, as applicable:

b. The participant's case manager;

c. The participant's **guardian[~~designated representative~~]**;

and

d. DBHDID, via fax, if abuse, neglect, or exploitation is suspected; and

3. Document the incident on a Critical Incident Report;

(b) If the critical incident is not one which requires reporting of abuse, neglect, or exploitation, the critical incident shall be reported within eight (8) hours of discovery to:

1. The participant's case manager;

2. The participant's **guardian**[~~designated representative~~]; and

3. To BHDID by fax, unless it occurs after 4:30 p.m. Eastern Standard Time or on a weekend, in which case notification shall be sent to DBHDID on the following business day;

(c) The witness of the critical incident or discovery agency employee or volunteer shall record details of the critical incident on an Incident Report form;

(d)[~~1.~~] The SCL provider shall:

1. Conduct an immediate investigation and involve the participant's case manager in the investigation; **and**

2. Prepare a report of the investigation which shall include:

a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;

b.[~~2.~~] Details of the critical incident; and

c.[~~3.~~] Relevant participant information including:

(i)[~~a.~~] Axis I diagnosis or diagnoses;

(ii)[~~b.~~] Axis II diagnosis or diagnoses;

(iii)[~~c.~~] Axis III diagnosis or diagnoses;

(iv)[~~d.~~] A listing of recent medical concerns;

(v)[~~e.~~] An analysis of causal factors; and

(vi)[~~f.~~] Recommendations for preventing future occurrences; and

(e) The SCL provider shall:

1. Maintain the documentation of the critical incident required in this subsection at the SCL provider's site; and

2. Provide a copy of the documentation to the case management agency of the participant's case manager.

(6) An SCL provider shall submit, by fax, mortality data documentation following a death of a participant receiving services from the SCL provider to DBHDID within fourteen (14) days and include:

(a) The participant's current plan of care;

(b) Any current assessment forms regarding the participant;

(c) The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription;

(d) Progress notes regarding the participant from all service elements for the past thirty (30) days;

(e) The results of the participant's most recent physical exam;

(f) All incident reports, if any exists, regarding the participant for the past six (6) months;

(g) Any medication error report, if any exists, related to the participant for the past six (6) months;

(h) A current psychological evaluation of the participant;

(i) A full life history of the participating including any update from the last version of the life history;

(j) Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant's life;

(k) Emergency medical services notes regarding the participant if available;

(l) The police report if available;

(m) A copy of:

1. The participant's advance directive, living will, or health care directive if applicable;

2. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and

3. The cardiopulmonary resuscitation and first aid card for any SCL provider's staff member who was present at the time of the incident which resulted in the participant's death;

(n) A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and

(o) A record of any crisis training for any staff member present at the time of the incident which resulted in the participant's death.

(7)(a) An SCL provider shall report a medication error to DBHDID by the fifteenth of the month following the error by completing the Medication Error Report Form.

(b) An SCL provider shall document all medication error details on a medication error log retained on file at the SCL provider site.

Section 7. SCL Waiting List. (1)**(a)**c[~~An individual applying for SCL waiver services shall be placed on a statewide waiting list which shall be maintained by DBHDID.~~

~~(2) An individual shall be placed on the SCL waiting list based upon the individual's region of origin in accordance with KRS 205.6317(3) and (4).~~

~~(3)(a)~~] In order to be placed on the SCL waiting list, an individual shall submit to DBHDID a completed MAP-620, Application for I/DD Services, which shall include:

1. A signature from a physician or an SCL developmental disability professional indicating medical necessity;

2. A current and valid intellectual or development disability diagnosis, including supporting documentation to validate the diagnosis and age of onset; and

3. Completion of the Axis I, II, and III diagnoses list.

(b) Supporting documentation to validate a diagnosis and age of onset shall include:

1. A psychological or psycho-educational report of the assessment results of at least an individual test of intelligence resulting in an intelligence quotient (IQ) score; and

2**.** The results of an assessment of adaptive behavior abilities which has been signed by the licensed psychologist, licensed psychological associate, certified psychologist with autonomous functioning, or certified school psychologist who prepared the report.

(c) The IQ test referenced in paragraph (a)2. of this subsection shall:

1. Have been conducted before the age of eighteen (18) years for a diagnosis of intellectual disability or before the eight of twenty-two (22) years for a diagnosis of a developmental disability; or

2. If a record of an IQ score prior to the age of eighteen (18) years for an applicant with an intellectual disability or prior to the age of twenty-two (22) years for an applicant with a developmental disability cannot be obtained, the following shall qualify as supporting documentation to validate a diagnosis and age of onset:

a. Individual education program documentation which contains an IQ score and a report or description of adaptive behavior skills;

b. The results of a psychological assessment submitted during the course of guardianship proceedings; or

c. The results of a current psychological assessment **which** shall:

(i) Include evidence of onset prior to the age of eighteen (18) years for an intellectual disability or the age of twenty-two (22) years for a developmental disability obtained through a comprehensive developmental history; and

(ii) Provide documentation ruling out factors or conditions which may contribute to diminished cognitive and adaptive functioning, including severe mental illness, chronic substance abuse, or medical conditions.

(4) DBHDID shall validate a MAP-620 application information.

(5) An individual's order of placement on the SCL waiting list shall be determined by the chronological date of receipt of a completed MAP-620 and by category of need of the individual as established in paragraphs (a) through (c) of this subsection.

(a) An individual's category of need shall be the emergency category if an immediate service is needed as determined by any of the following if all other service options have been explored and exhausted:

1. Abuse, neglect, or exploitation of the individual as substantiated by DCBS;

2. The death of the individual's primary caregiver and lack of alternative primary caregiver;

3. The lack of appropriate placement for the individual due to:

a. Loss of housing; [~~or~~]

b. **Loss of funding; or**

c. Imminent discharge from a temporary placement;

4. Jeopardy to the health and safety of the individual due to the primary caregiver's physical or mental health status; or

5. Imminent or current institutionalization.

(b) An individual's category of need shall be the urgent catego-

ry if an SCL service is needed within one (1) year; and

1. There is a threatened loss of the individual's existing funding source for supports within the year due to the individual's age or eligibility;

2. The individual is residing in a temporary or inappropriate placement but the individual's health and safety is assured;

3. The individual's primary caregiver has a diminished capacity due to physical or mental status and no alternative primary caregiver exists; or

4. The individual exhibits an intermittent behavior or action that requires hospitalization or police intervention.

(c) An individual's category of need shall be classified as future planning if an SCL service is needed in more than one (1) year; and

1. The individual is currently receiving a service through another funding source that meets the individual's needs;

2. The individual is not currently receiving a service and does not currently need the service; or

3. The individual is in the custody of DCBS.

(6) A written notification of original placement on the SCL waiting list and any change due to a reconsideration shall be mailed to an individual or the individual's **guardian[~~designated representative~~]** and case management provider if identified.

(7) In determining chronological status, the original date of receipt of a MAP- 620 shall be maintained and shall not change when an individual is moved from one (1) category of need to another.

(8) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.

(9) Maintenance of the SCL waiting list shall occur as follows:

(a) The department shall, at a minimum, annually update the waiting list during the birth month of an individual.

(b) The individual or individual's **guardian[~~designated representative~~]** and case management provider, if identified, shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and the individual's or individual's **guardian's[~~designated representative's~~]** continued desire to pursue placement in the SCL program.

(c) If a discrepancy in diagnostic information is noted at the time of the annual update, the department may request a current diagnosis of intellectual or developmental disability signed by a physician or SCL DDP, including documentation supporting the diagnosis.

(d) The information referenced in paragraph (c) of this subsection shall be received by the department within thirty (30) days from the date of the written request in order to be considered timely.

(10) A reassignment of an individual's category of need shall be completed based on updated information and the validation process.

(11) An individual or individual's **guardian[~~designated representative~~]** may submit a written request for consideration of movement from one (1) category of need to another if there is a change in status of the individual.

(12)(a) The criteria for removal from the SCL waiting list shall be:

1. After a documented attempt, the department is unable to locate the individual or the individual's **guardian[~~designated representative~~]**;

2. The individual is deceased;

3. A review of documentation reveals that the individual does not have an intellectual or a developmental disability diagnosis;

4. A notification of potential SCL funding is made and the individual or the individual's **guardian[~~designated representative~~]** declines the potential funding and does not request to be maintained on the SCL waiting list; or

5. Notification of potential SCL funding is made and the individual or the individual's **guardian[~~designated representative~~]** does not complete the enrollment process with DBHDID nor notify DBHDID of the need for an extension within sixty (60) days of the potential funding notice date.

(b)1. A notification of need for an extension for good cause shall consist of a statement signed by the individual or the individual's **guardian[~~designated representative~~]** explaining the reason for the delay in accessing services, steps being taken to access services, and expected date to begin utilizing services.

2. Upon receipt of documentation, the department shall grant, in writing, one (1) sixty (60) day extension.

(13) If a notification of potential SCL funding is made and an individual or the individual's **guardian[~~designated representative~~]** declines the potential funding but requests to be maintained on the SCL waiting list:

(a) The individual shall be placed in the appropriate category on the SCL waiting list; and

(b) The chronological date shall remain the same.

(14) If an individual is removed from the SCL waiting list, DBHDID shall mail written notification to the:

(a) Individual or the individual's **guardian[~~representative~~]**; and

(b) Individual's case management provider.

(15) The removal of an individual from the SCL waiting list shall not prevent the submission of a new application at a later date.

(16) An individual shall be allocated potential funding based upon:

(a) Category of need;

(b) Chronological date of placement on the SCL waiting list; and

(c) Region of origin in accordance with KRS 205.6318(3) and (4).

(17) To be allocated potential funding, an individual residing in an institution shall meet the following criteria in addition to the criteria established in this section.

(a) The individual's treatment professionals determine that an SCL placement is appropriate for the individual; and

(b) The SCL placement is not opposed by the individual or the individual's **guardian[~~designated representative~~]**.

Section 8. Use of Electronic Signatures. (1) The creation, transmission, storage, or other use of electronic signatures and documents shall comply with:

(a) The requirements established in KRS 369.101 to 369.120; and

(b) All applicable state and federal statutes and regulations.

(2) An SCL service provider choosing to utilize electronic signatures shall:

(a) Develop and implement a written security policy which shall:

1. Be adhered to by all of the provider's employees, officers, agents, or contractors;

2. Stipulate which individuals have access to each electronic signature and password authorization; and

3. Ensure that an electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form which shall:

1. Be completed and executed by each individual utilizing an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Produce to the department a copy of the agency's electronic signature policy, the signed consent form, and the original filed signature immediately upon request.

(3) A participant or participant's **guardian[~~designated representative~~]** may choose to use an electronic signature and, if choosing to use an electronic signature, shall execute a consent form which shall:

1. Be completed and executed by each individual utilizing an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature.

Section 9. **Employee Policies and Requirements Apply to Subcontractors. Any policy or requirement established in this administrative regulation regarding an employee shall apply to a subcontractor.**

Section 10. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

(4) The department shall not grant an appeal regarding a category of need determination made pursuant to Section 7 of this administrative regulation.

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

(a) The "Supports for Community Living Policy Manual", **November**[~~July~~] 2012 edition;

(b) The "Person Centered Plan of Care", **November**[~~July~~] 2012 edition;

(c) The "Supported Employment Long-Term Support Plan", December 2011 edition;

(d) The "Critical Incident Report", **November 2012**[~~August 13, 2012~~] edition;

(e) The "Incident Report", **November 2012**[~~August 13, 2012~~] edition;

(f) The "Person Centered Employment Plan", March 2012 edition;

(g) The "Person Centered Employment Plan Activity Note", July 2012 edition; and

(h) The "Medication Error Report Form", August 2012 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at http://www.chfs.ky.gov/dms/incorporated.htm.

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Claudia Johnson (502) 564-7702, Dr. Stephen Hall (502) 564-4527 or Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service and coverage policies for the Medicaid Supports for Community Living (SCL) waiver program. The SCL program enables individuals with an intellectual or developmental disability to live, and receive services, in a community rather than in an institution.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish reimbursement policies for the Medicaid SCL waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation; however, it's implementing a new version of an existing program – the Medicaid SCL waiver program. Current SCL waiver participants will transition from the current SCL waiver to the new version during their annual person centered planning meeting which occurs during the month of the participant's next birthday. No participant will lose services due to this transition.

All services provided under the current SCL waiver program regulation(907 KAR 1:145) will be available in some form in this new administrative regulation except that fiscal management will be an administrative function rather than a service provided by an SCL waiver provider. Several of the current services have been renamed. 907 KAR 1:145 offers three similar services called adult day training on site, adult day training off site, and children's day habilitation. These services will be deleted and replaced, under this administrative regulation, with day training which encompasses all three previous services. 907 KAR 1:145 offers a service called community living supports which includes training or assistance to an individual who does not receive residential supports and can include a variety of activities designed to increase independence both in the home and in the community. This administrative regulation replaces this one service with two services - personal assistance and community access. Personal assistance is designed to enable SCL waiver program participants to accomplish tasks that they normally would do for themselves if they did not have a disability. Community access is designed to support the participant in meaningful routines, events, and organizations in the community. These services are designed to result in increased ability to access community resources by natural or unpaid supports. 907 KAR 1:145 includes residential supports which take place in four settings, staffed residence, group home, family home provider, and adult foster care. This administrative regulation replaces this service with two residential supports - level I and II and each has two levels of supervision. Level I residential supports will be in a provider owned residence and level II will be in a non-provider owned residence. Level II supports will also give the option of residential supports in the recipient's own home. A third residential support, technology assisted residential supports will also be offered to anyone currently in a staffed residence as a less restrictive alternative. This administrative regulation introduces a new service for participants living in their own home called shared living which will also be offered as another option to increase independence and choice. The support broker service in the current regulation will be replaced with a community guide service which will be optional for anyone choosing to self direct any or all of their services. Fiscal management will no longer be a covered service, but will provided through a contract with a single entity that will provide it for all participants who choose to direct any of their services. 907 KAR 1:145 includes behavior supports which is being replaced with three (3) distinct services - positive behavior supports, consultative clinical and therapeutic services, and person centered coaching. Positive behavior supports is designed to assist the individual with significant, intensive challenges that interfere with activities of daily living, social interaction, work or volunteer situations. These services provide for the analysis of data collected during the functional assessment of behavior which is the basis for development of a positive behavior support plan for the acquisition or maintenance of skills for community living and behavioral intervention for the reduction of maladaptive behaviors. Consultative clinical and therapeutic service provides expertise, training and technical assistance to improve the ability of paid and unpaid caregivers to carry out therapeutic interventions. Through this service, a professional may complete an assessment of the individual, their environment and system of supports; provide recommendations; and participate in development/revision of components of a participant's person-centered plan. Individuals may need this service to coordinate program wide support addressing assessed needs, conditions or symptoms affecting their ability to fully participate in their community. Person centered coaching is an individualized service of monitoring, training, and assessing effectiveness of person centered planning. These services provide for modeling, monitoring, assessing and implementing the person centered plan. The person centered coach is responsible for training the individual, family, guardian, natural and paid supports as well as other team members who are recognized as an integral part of person centered planning when barriers challenge the success of the individual in achieving their goals. The remaining services - respite, supported

employment, occupational therapy, speech therapy, physical therapy, specialized medical equipment, goods and services - remain in the new regulation with some revision. New services established in this administrative regulation include community transition, transportation, environmental accessibility, vehicle adaptation, and natural support training. The term "consumer direction" is being replaced with "participant direction" with no change in function. Participant direction is the term utilized by the Centers for Medicare and Medicaid Services (CMS) who approved the 1915(c) home and community based waiver which federally authorizes this program.

Amendments after comments include: deleting the terms "certified social worker" and "licensed social worker" as "licensed clinical social worker" is the only appropriate term; deleting "designated representative" as "guardian" is the appropriate term; removing the term "subcontractor" from the definition of "employee" (in response to public comments) as the two are not identical; clarifying that an extended family member cannot be a shared living caregiver; redefining "National Core Indicators" in response to public comment; establishing that a person centered coach "monitors", rather than "assesses", the effectiveness of a participant's person centered plan of care (in response to public comment); eliminated the eligibility requirement that an individual must be placed on the SCL waiting list (in response to public comment); stated that a Support Intensity Scale assessment must be done once every twenty-four (24) months rather than once every twelve (12) months in order to correct the policy (this assessment will be performed by the department rather than a service provider); deleted the statement that "(4) The department may exclude from receiving an SCL waiver service an applicant for whom the aggregate cost of SCL waiver services would reasonably be expected to exceed the cost of ICF-IID services" (in response to public comment) as the statement is inconsistent with the waiver approved by CMS; clarifying that an individual who provides a transportation service to an SCL participant must have a driver's license rather than a Kentucky driver's license; removed the requirement that a case manager must be the staff who provides training on the individualized needs of a participant (in response to public comment); removed the requirement for a community access specialist to meet the SCL personnel and training requirements (in response to public comments); removed licensed practical nurses from being eligible providers of consultative clinical and therapeutic services (in response to public comment as it was erroneously included as a provider type); removed the monthly summary requirement for consultative clinical and therapeutic services (in response to public comments); revised the policies and description of a day training service to include "pre-vocational" activity as an allowable day training activity (in response to public comments) and deleted the statement that a day training activity shall not be reimbursable "if the participant is earning less than the customary wage and level of benefits paid by an employer for the same or similar work performed by individuals without disabilities" (in response to public comments); removed the requirement that natural supports training must be provided by someone who meets the SCL waiver personnel and training requirements (in response to public comment); removed the monthly summary requirement for occupational therapy, physical therapy and speech therapy (in response to public comments); no longer require a positive behavior support specialist to supervise a person centered coach but rather establish that a person centered coach must work under the direction of a positive behavior support specialist or other licensed professional (in response to public comments); establish that a person centered coach must do a summary of services provided rather than an analysis of the efficacy of services provided (in response to public comment); clarified that a transportation service to be provided by an immediate family member, guardian, or legally responsible individual of a participant; adding "loss of funding" as a criteria which would qualify an individual to be in the emergency category of the SCL waiting list (in response to public comment); revised the conflict free case management policy from being that an exemption to conflict of interest would be granted if no independent case manager is located within thirty (30) miles [rather than (thirty (30) minutes] OR (rather than and) the participant's relationship with the case manager has lasted at least one (1) year; and allowing immediate family members or guardians of participants to provide support to participant directed services if no qualified provider is located within thirty (30) miles [rather than thirty (30) minutes] of the participant.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation which amends an existing SCL waiver program. The SCL waiver program amendments result from recommendations from a coalition including advocates, various other stakeholders, the Department for Behavioral Health and Intellectual Disabilities (DBHDID) and the Department for Medicaid Services (DMS). The intent of the new SCL waiver program is to offer a greater opportunity for program participants to realize individual goals; to ensure that participants in the program are healthy, safe and respective in their community; that participants are able to live in their respective communities with effective and individualized assistance; and that participants enjoy living and working in their respective communities. The coalition identified new services or service modifications, program changes and system changes that will lead to better identification of individual's needs which will assist in developing person-centered plans for the individuals. Additionally, enhanced education and training requirements (of providers) will improve provider competency and continuity of care resulting in positive supports for participants that are important to and for the participants.

Many of the amendments after comments are being made in response to public comments or are clarifications (to eliminate confusion or calm fears or concerns about individuals having choice in the services they can receive in the new version of the SCL waiver) or are corrections of statements that were in the initial version of the administrative regulation. Several amendments lessen the administrative burden on providers and several provide participants or providers with more flexibility.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation which will conform to the content of the authorizing statutes by implementing a new version of the SCL waiver program which has been approved by the Centers for Medicare and Medicaid Services (CMS.) The amendments after comments will conform to the content of the authorizing statutes by eliminating confusion, lessening the administrative burden on providers, and inserting more flexibility into the program.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation which will assist in the effective administration of the authorizing statutes by implementing a new version of the SCL waiver program which has been approved by the Centers for Medicare and Medicaid Services (CMS.) The amendments after comments will assist in the effective administration of the authorizing statutes by eliminating confusion, lessening the administrative burden on providers, and inserting more flexibility into the program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Providers and recipients of SCL waiver services will be affected by the amendment. Currently, there are 202 SCL waiver service providers and as of November 1, 2012 there were 3,696 individuals receiving services via the SCL waiver program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. SCL waiver service providers will have to comply with provider requirements including that staff meet the required education and training requirements, that services are delivered in the manner required and protecting SCL waiver participants' healthy, safety and welfare.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on providers. Entities becoming providers for the first time may incur new business start-up costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The new administrative regulation

offers individualized, community based-services to divert individuals who have an intellectual disability and otherwise need institutional services (from an intermediate care facility for individuals with an intellectual disability or development disability – ICF/IID) and to support individuals who transition from an ICF/IID to the community. The services are designed to ensure that individuals are safe in their communities and are afforded choices, to create a positive culture that promotes person-centered thinking.

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

(a) Initially: The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was $264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated $2,200,000 in state funds (to be matched with $5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(b) On a continuing basis: The biennium budget allocated $7,650,100 in state funds to be matched with $18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities and individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was $264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated $2,200,000 in state funds (to be matched with $5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(d) How much will it cost to administer this program for subsequent years? The biennium budget allocated $7,650,100 in state funds to be matched with $18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amended After Comments)

907 KAR 12:020. Reimbursement for New Supports for Community Living Waiver Services.

RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010 rather than the program established pursuant to 907 KAR 1:145. Providers who provide SCL waiver services to individuals pursuant to 907 KAR 1:145 shall continue to be reimbursed pursuant to 907 KAR 1:155. The SCL waiver program is federally authorized via a 1915(c) home and community based waiver which enables individuals with an intellectual or developmental disability to reside and receive services in a community setting rather than in an intermediate care facility for individuals with an intellectual or developmental disability. **Funding for the SCL waiver program is associated with and generated through SCL waiver program participants rather than SCL waiver service providers.**

Section 1. Definitions. (1) "Allocation" means the dollar amount designated to meet a participant's identified needs.

(2) "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

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

(4) "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable either to an intellectual disability as defined in this section or a condition related to an intellectual disability that results in:

1. An impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. Are a direct result of, or are influenced by, the person's cognitive deficits.

(5) "Exceptional support" means a service:

(a) Requested by a participant and the participant's team; and

(b) That due to an extraordinary circumstance related to a participant's physical health, psychiatric issue, or behavioral health issue is necessary to:

1. Be provided in excess of the upper payment limit for the service for a specified amount of time; and

2. Meet the assessed needs of the participant.

(6)**[**~~**"Exceptional supports protocol" means the set of rules that establish how DBHDID:**~~

~~**(a) Reviews an exceptional support request;**~~

~~(b) Approves an exceptional support request;~~

~~(c) Revises a limit related to an exceptional support request; or~~

~~(d) Sets a standard related to an exceptional support request.~~

~~(7)~~] "Immediate family member" is defined by KRS 205.8451(3).

(7)[~~(8)~~] "Intellectual disability" or "ID" means:

(a) A demonstration:

1.[~~(a)1.~~] Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of approximately seventy (70) or below; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

a. Communication;

b. Self-care;

c. Home living;

d. Social or interpersonal skills;

e. Use of community resources;

f. Self-direction;

g. Functional academic skills;

h. Work;

i. Leisure; or

j. Health and safety; and

(b) **An intellectual disability that had an onset before**[~~Which occurred prior to the individual reaching eighteen (18) years of age.~~

~~(b) Which is demonstrated before an individual reaches~~] eighteen (18) years of age.

(8)[~~(9)~~] "Legally responsible individual" means an individual who has a duty under state law to care for another person and includes:

(a) A parent (biological, adoptive, or foster) of a minor child who provides care to the child;

(b) The guardian of a minor child who provides care to the child; or

(c) A spouse of a participant.

(9)[~~(10)~~] "Participant" means a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for an individual with an intellectual or a developmental disability as established in 907 KAR 1:022;

(b) Is authorized by the department to receive SCL waiver services; and

(c) Utilizes SCL waiver services and supports in accordance with a person centered plan of care.

(10)[~~(11)~~] "Participant directed service" means an option to receive a service which is based on the principles of self-determination and person-center thinking.

(11)[~~(12)~~] "POC" means Plan of care.

(12)[~~(13)~~] "State plan" is defined by 42 C.F.R. 430.10.

(13)[~~(14)~~] "Supports for community living services" or "SCL services" means community-based waiver services for a participant who has an intellectual or developmental disability.

Section 2. Coverage. (1) The department shall reimburse a participating SCL provider for a covered service provided to a participant.

(2) In order to be reimbursable by the department, a service shall be:

(a) Provided in accordance with the terms and conditions specified in 907 KAR 12:010; and

(b) Prior authorized by the department.

Section 3. SCL Reimbursement and Limits. (1) Except as established in section 4 of this administrative regulation, the department shall reimburse for an SCL service provided in accordance with 907 KAR 12:010 to a participant:

(a) The amount of the charge billed by the provider; and

(b) Not to exceed the fixed upper payment rate limit for the service.

(2 The upper payment limits listed in the following table shall be the upper payment limits for the corresponding services listed in the following table:

Service	Unit of Service	Upper Payment Limit
Case Management	1 month	$320.00
Community Access-Individual	15 minutes	$8.00
Community Access-Group	15 minutes	$4.00
Community Guide	15 minutes	$8.00
Consultative, Clinical and Therapeutic	15 minutes	$22.50
Day Training through December 31, 2013	**15 minutes**	**$2.50**
Day Training **effective January 1, 2014**	15 minutes	$2.20
Day Training (Licensed Adult Day Health Center)	15 minutes	$3.00
Occupational therapy by occupational therapist	15 minutes	$22.17
Occupational therapy by certified occupational therapy assistant	15 minutes	$16.63
Physical therapy by physical therapist	15 minutes	$22.17
Physical therapy by physical therapy assistant	15 minutes	$16.63
Person Centered Coach	15 minutes	$5.75
Personal Assistance	15 minutes	$5.54
Positive Behavior Support	1 positive behavior support plan	$665.00
Residential Level I - (4 to 8 residents)	24 hours	$130.35
Residential Level I – (3 or less residents)	24 hours	$172.46
Residential Level I - Technology Assisted	24 hours	$79.00
Residential Level II -12 or more hours of supervision	24 hours	$141.69
Residential Level II-fewer than 12 hours of supervision	24 hours	$79.00
Respite	15 minutes	$2.77
Speech therapy	15 minutes	$22.17
On-Site Supported Employment	15 minutes	$10.25

(3) Any combination of a day training service, a community access service, personal assistance, supported employment, and a participant's hours of employment shall not exceed sixteen (16) hours per day.

(4) Community access services shall not exceed 160 units per week.

(5) Community guide services shall not exceed 576 units per one (1) year authorized POC period.

(6) Community transition shall be based on prior authorized cost not to exceed $2,000 per approved transition.

(7) Consultative clinical and therapeutic services shall not exceed 160 units per one (1) year authorized POC period.

(8) Day training and supported employment alone or in combination shall not exceed 160 units per week.

(9) Environmental accessibility shall be:

(a) Based on a prior authorized, estimated cost; and

(b) Limited to an $8,000 lifetime maximum.

(10) Goods and services shall not exceed $1,800 per one (1) year authorized POC period.

(11) Natural support training shall be based on a prior authorized, estimated cost not to exceed $1,000 per one (1) year authorized POC period.

(12) Person centered coaching shall not exceed 1,320 units

per year.

(13) Physical therapy and physical therapy by physical therapy assistant shall in combination not exceed fifty-two (52) units per month.

(14) Occupational therapy and occupational therapy by occupational therapy assistant shall in combination not exceed fifty-two (52) units per month.

(15) Respite shall be limited to 3,320 units (830 hours) per one (1) year authorized POC period.

(16) Shared living shall be based on a prior authorized amount not to exceed $600 per month.

(17) Speech therapy shall not exceed fifty-two (52) units per month.

(18) A vehicle adaptation shall be limited to $6,000 per five (5) years per participant.

(19) Transportation:

(a) Provided as a participant directed service, shall be reimbursed:

1. Based on the mileage; and

2. At two thirds of the rate established in 200 KAR 2:006, Section 8(2)(d) when provided by an individual. The rate shall be adjusted quarterly in accordance with 201 KAR 2:006, Section 8(2)(d); or

(b) Provided by a public transportation service provider shall be reimbursed at the cost per trip as documented by the receipt for the specific trip.

(c) Reimbursement shall be limited to $265 per calendar month.

(20) An estimate for a supply item requested under specialized medical equipment or goods and services shall be based on the actual price to be charged to the provider, participant, or individual by a retailer or manufacturer.

(21) Specialized medical equipment or goods and services shall not include equipment and supplies covered under the Kentucky Medicaid program's state plan including:

(a) Durable medical equipment;

(b) Early and Periodic Screening, Diagnosis, and Treatment Services;

(c) Orthotics and prosthetics; or

(d) Hearing services.

(22) A participant shall not receive multiple SCL services during the same segment of time except in the case of the following collateral services that shall be allowed to overlap other SCL services:

(a) Community guide services;

(b) Consultative clinical and therapeutic services; or

(c) Person centered coaching.

Section 4. Exceptional Supports. (1) A service listed in subsection (2) or (3) of this section, regardless of delivery method, shall qualify as an exceptional support:

(a) Based on the needs of the participant for whom the exceptional support is requested;

(b) For a limited period of time not to exceed a full POC year;

(c) If qualifying as an exceptional supported in accordance with the **Kentucky** Exceptional Supports Protocol; and

(d) If approved by DBHDID to be an exceptional support.

(2)(a) The following shall qualify as an exceptional support and to be reimbursed at a rate higher than the upper payment limit established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

1. Community access services;

2. Day training that is not provided in an adult day health care center;

3. Personal assistance;

4. Respite;

5. Residential Level I – three (3) residents;

6. Residential Level I - four (4) to eight (8) residents; or

7. Residential Level II – twelve (12) or more hours.

(b) A rate increase for a service authorized as an exceptional support shall:

1. Be based on the actual cost of providing the service; and

2. Not exceed twice the upper payment limit established for the service in Section 3 of this administrative regulation.

(3) The following shall qualify as an exceptional support and to be provided in excess of the unit limits established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

1. Consultative clinical and therapeutic services;

2. Person centered coaching;

3. Personal assistance; or

4. Respite.

(4)(a) A service that qualifies as an exceptional support shall:

1. Be authorized to be reimbursed at a rate higher than the upper payment limit established for the service in Section 3 of this administrative regulation; or

2. Be authorized to be provided in excess of the unit limit established for the service in Section 3 of this administrative regulation; and

(b) Not be authorized to be reimbursed at a higher rate than the upper payment limit and in excess of the service limit established for the service in Section 3 of this administrative regulation.

Section 5. Allocation. (1) A participant shall be designated an allocated amount of funding to cover SCL waiver expenses for the participant's POC period based on assessment of the participant's needs performed by DBHDID.

Section 6. Participant Directed Services. (1) A reimbursement rate for a participant directed service shall:

(a) Not exceed the upper payment limit established for the service in Section 3 of this administrative regulation unless the service qualifies as an exceptional support in accordance with Section 3(2)(a) of this administrative regulation; and

(b) Include:

1. All applicable local, state, and federal withholdings; and

2. Any applicable employment related administrative costs which shall be the responsibility of the participant who is directing the service.

(2) An employee who provides a participated directed service shall not be approved to provide more than forty (40) hours of service per week unless authorized to do so by the department.

(3) A legally responsible individual or immediate family member shall not be authorized to be reimbursed for more than forty (40) hours of participant directed services per week.

Section 7. Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 12:010.

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

Section 9. Incorporation by Reference. (1) The "**Kentucky** Exceptional Supports Protocol", **November**[~~July~~] 2012 edition is incorporated by reference.

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

LAWRENCE KISSNER, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Claudia Johnson, Dr. Stephen Hall, or Stuart Owen

(1)Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement policies for the Medicaid Supports for Community Living (SCL) waiver program. The

SCL program enables individuals with an intellectual or developmental disability to live, and receive services, in a community rather than in an institution.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish reimbursement policies for the Medicaid SCL waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation which implements reimbursement for a new version of the Medicaid SCL waiver program. The service and coverage policies for the new SCL waiver program are established in 907 KAR 12:010. All services in the current SCL waiver program will be available in some form in the new SCL waiver program though some have been renamed or merged with one or more services. Consequently, the reimbursement in this administrative regulation corresponds to the modified services. 907 KAR 1:155 continues the reimbursement policies for the current version of the SCL waiver program and 907 KAR 1:145 contains the service and coverage policies for the existing SCL waiver program. DMS is amending the incorporated material – the Exceptional Supports Protocol – in response to comments received during the public comment period and is also establishing in this amendment after comments that the day training reimbursement limit will be $2.50 per fifteen (15) minute unit through close of business December 31, 2013 and then drop to $2.20 per fifteen (15) minute unit on January 1, 2014. The Exceptional Supports Protocol amending being made to accommodate circumstances when an individual needs increased behavioral health services. Delaying the day training rate reduction is being done to give providers an extended transition period to transition participants who would benefit from supported employment (which is reimbursed at a significantly increased rate) from day training to supported employment.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation necessary to establish reimbursement rates for a new version of the Medicaid SCL waiver program. The amendment to the Exceptional Supports Protocol in response to comments is necessary to ensure that additional behavioral health services are covered when needed. Delaying the day training rate reduction is necessary to give providers an extended transition period to transition participants who would benefit from supported employment (which is reimbursed at a significantly increased rate) from day training to supported employment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation which conforms to the content of the authorizing statutes by establishing reimbursement which corresponds to services established in a new version of the SCL waiver program. The amendment to the Exceptional Supports Protocol conforms to the content of the authorizing statutes by enabling individuals to receive additional behavioral health services if circumstances warrant this. The day training amendment conforms to the content of the authorizing statutes by giving providers an extended transition period to transition participants who would benefit from supported employment (which is reimbursed at a significantly increased rate) from day training to supported employment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation which will assist in the effective administration of the authorizing statutes by establishing reimbursement which corresponds to services established in a new version of the SCL waiver program. The amendment to the Exceptional Supports Protocol will assist in the effective administration of the authorizing statutes by enabling individuals to receive additional behavioral health services if circumstances warrant this. The day training amendment will assist in the effective administration of the authorizing statutes by giving providers an extended transition period to transition participants who would benefit from supported employment (which is reimbursed at a significantly increased rate) from day training to supported employment.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Providers of SCL services will be affected by the amendment. Currently, there are 202 such 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. SCL providers will have to provide services in accordance with the corresponding service and coverage policy regulation – 907 KAR 12:010 – in order to be reimbursed for providing the services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). SCL providers who provide services in accordance with (907 KAR 12:010 – the new version of the SCL waiver program) will be able to be reimbursed for providing the services.

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

(a) Initially: The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was $264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the General Assembly allocated $2,200,000 in state funds (to be matched with $5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(b) On a continuing basis: The biennium budget allocated $7,650,100 in state funds to be matched with $18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department 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. This administrative regulation authorizes the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was $264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the General Assembly allocated $2,200,000 in state funds (to be matched with $5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.

(d) How much will it cost to administer this program for subsequent years? The biennium budget allocated $7,650,100 in state funds to be matched with $18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal 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:

PROPOSED AMENDMENTS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.740, 164.744(2), 164.753(3), 164.769
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(5), (6)(f)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).
(2) "Critical shortage area" is defined in KRS 164.769(2)(a).
(3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.
(4) "Eligible program of study" is defined in KRS 164.769(2)(b).
(5) "Expected family contribution" is defined in KRS 164.769(2)(c).
(6) "Kentucky Teacher Internship Program" or "KTIP" means the one (1) year of supervision, assistance, and assessment that is:
(a) Required by KRS 161.030 and established in 16 KAR 7:010; and
(b) Also referenced as the beginning teacher internship.
(7) "Participating institution" is defined in KRS 164.769(2)(d).
(8) "Professional Teaching Certificate" means the document issued to:
(a) An individual upon successful completion of the beginning teacher internship; or
(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and successful completion of the assessments.
(9) "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, or secondary instruction.
(10) "Qualified teaching service" is defined in KRS 164.769(2)(e).
(11) "Semester" is defined in KRS 164.769(2)(f).
(12) "Summer term" is defined in KRS 164.769(2)(g).
(13) "Teaching" means performing continuous classroom instruction pursuant to a Professional Teaching Certificate or during participation in the Kentucky Teacher Internship Program (KTIP), and shall not include substitute teaching.

Section 2. Eligibility of Renewal Applicants and Selection Process. (1) Applicants shall complete the Teacher Scholarship Application set forth in 11 KAR 4:080, Section 1(3), according to its instructions. The applicant shall ensure that the completed application and supporting data indicating the applicant's financial need are received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday preceding the academic year for which the award is requested.
(2) Eligibility of renewal applicants. A person who previously received a loan or scholarship pursuant to KRS 164.769 shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.
(3) After awards are made to all qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted:
(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.
(b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.
(c) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher scholarship award shall be calculated by determining the student's total cost of education minus expected family contribution and the amount of financial aid received or expected to be received during the academic period. The amount of financial aid received or expected to be received during the academic period shall not include any amounts available from any student loan or work-study programs.
(2) The maximum teacher scholarship award for a student classified as a junior, senior, post baccalaureate, or graduate shall not exceed[~~be~~] $1,250 for a summer session, $2,500 for a semester, and $5,000 for an academic year (exclusive of a summer session).
(3) The maximum teacher scholarship award for a student classified as a freshman or sophomore shall not exceed[~~be~~] $325 for a summer session, $625 for a semester, and $1,250 for an academic year (exclusive of a summer session).
(4) The maximum award to an eligible student enrolled less than full time in the last semester or summer term during which a baccalaureate, post baccalaureate or master's degree will be completed shall not exceed[~~be~~]:
(a) $210 per credit hour if the student is enrolled during a regular semester; or
(b) $105 per credit hour if the student is enrolled in a summer term.

Section 4. Disbursements. (1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.
(2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer.
(3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.
(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.
(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.
(6) The participating institution shall indicate on the disburse-

ment roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.

(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 12 of this administrative regulation.

(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that he was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the school shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Cancellation. (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2)(a) If a recipient has received loans or scholarships from more than one (1) program that is administered by the authority, and requires a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently.

(b) Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received.

(c) If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(3) A recipient shall receive cancellation under this program for each semester during which service is provided as specified in KRS 164.769(6)(c) if the recipient:

(a) Has completed the program of study;

(b) Is providing qualified teaching service; and

(c) Is prohibited from participating in KTIP solely as a result of state budget limitations.

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) A recipient failing to complete the eligible program of study, attain certification after completion of the eligible program of study, or commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be six (6) percent per annum beginning April 1, 2005. Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.

(3) If a repayment obligation subsequently becomes eligible for service credit cancellation as a result of the recipient's provision of teaching service, refund of payments previously made shall not be given to the recipient.

Section 7. Default. (1) Upon default on a repayment obligation under this program, the recipient's account shall be transferred to the appropriate agency of the Commonwealth of Kentucky for collections and shall be subject to the collection charges and fees assessed by that agency.

(2) A recipient whose repayment obligation has defaulted and who subsequently begins either providing qualified teaching service in the Commonwealth of Kentucky or participating in KTIP shall be removed from default status.

Section 8. Disability Discharge. A conditional or permanent discharge of the repayment obligation required by this program shall be granted by the Authority upon submission by the recipient of the documentation required by this section.

(1) Conditional discharge. A conditional discharge shall be granted for a maximum two (2) year period, subject to annual review by the Authority, upon the submission of one (1) of the following as proof of the recipient's qualifying disability;

(a) A finding of permanent disability by the Social Security Administration; or

(b) A completed Teacher Scholarship Program Application for Discharge, which shall include a certification by the recipient's treating physician that the recipient is unable to work or earn money and that the condition is expected to persist indefinitely.

(2) Permanent discharge. At the expiration of the two (2) year Conditional Discharge period specified in subsection (1) of this section, the Authority shall grant a permanent discharge to a recipient under this program upon the submission by the recipient of current documentation verifying that the qualifying disability exists at the time the permanent discharge is granted.

Section 9. Notifications. A recipient shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 10. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 11. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least three (3) years after the student ceases to be enrolled at the institution.

Section 12. Refunds. (1) If a student fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after the student's first day of class of the period of enrollment or changes enrollment status, the Authority may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:

(a) CAP grant;

(b) KTG;

(c) Teacher scholarship;

(d) Kentucky Educational Excellence Scholarship;

(e) National Guard tuition assistance; and

(f) Early Childhood Development Scholarship.

(7)(a) If a teacher scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund and repayment of the teacher scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student's last date of attendance, any teacher scholarship disbursement for that award period shall be subject to full refund.

(c) If a teacher scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full teacher scholarship shall be subject to:

1. Cancellation, if not yet disbursed; or

2. Refund if the teacher scholarship has already been disbursed.

(8)(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security number;

2. The reason for the refund;

3. The date of enrollment status change;

4. The semester and year; and

5. The calculation used for determining the refund.

Section 13. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the institution. The participating institution shall actively recruit students from minority population groups for participation in this program.

Section 14. Incorporation by Reference. (1) "Teacher Scholarship Program Application for Discharge", November 2007, is incorporated by reference.

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

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: October 25, 2012

FILED WITH LRC: November 13, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, December 27, 2012, at 10:00 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on Wednesday, January 2, 2013. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

(b) The necessity of this administrative regulation: KRS 164.744(2) authorizes the Authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. This administrative regulation is necessary to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.744(2) authorizes the Authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the Teacher Scholarship Program by establishing the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

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

(a) How the amendment will change this existing administrative

regulation: The amendment will change the existing administrative regulation by allowing the Authority flexibility to determine the maximum award amount under the Teacher Scholarship Program based upon funds available for that program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide scholarship awards to the greatest possible number of applicants given the limited pool of funds.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by refining the provisions established by the Authority previously for the awarding of scholarships under this program.

(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 enabling the Authority to determine the maximum award amount under this program in order to aid the greatest possible number of applicants under this scholarship program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible Teacher Scholarship applicants will be impacted by this amendment.

(4) Provide an analysis of how the entities identified in (3) above 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 in order to comply with this administrative regulation or amendment: The entities identified above need only submit an application for the Teacher Scholarship program in order to comply with this regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All Teacher Scholarship applicants will be considered for an award under this program upon submission of an application.

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

(a) Initially: No cost.

(b) On a continuing basis: Same as 5(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Teacher Scholarship Awards are funded from net lottery revenues transferred to the Authority for grant and scholarship programs while administrative costs are borne by the Authority through receipts of the Authority.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. 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 AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(3), 164.769(5), (6)(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. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 6:010. Examination prerequisites for teacher certification.

RELATES TO: KRS 161.020, 161.028(1), 161.030(3), (4)

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) requires the Education Professional Standards Board to select the appropriate assessments required prior to teacher certification. This administrative regulation establishes the examination prerequisites for teacher certification.

Section 1. A teacher applicant for certification shall successfully complete the appropriate tests identified in this administrative regulation prior to Kentucky teacher certification.

Section 2. The Education Professional Standards Board shall require the test or tests and passing scores identified in this section for each new teacher applicant and each teacher seeking an additional certificate. (1) An applicant for Interdisciplinary Early Childhood Education certification (birth to primary) shall take one (1) of the following tests and achieve the corresponding passing score or higher:

(a) "Interdisciplinary Early Childhood Education (0023)" – 166; or

(b) "Interdisciplinary Early Childhood Education (5023)" – 166.[~~An applicant for Interdisciplinary Early Childhood Education certification (birth to primary) shall take "Interdisciplinary Early Childhood Education (0023)" with a passing score of 166.~~]

(2)[~~(a) Until August 31, 2012, an applicant for Elementary certification (grades P-5) shall take "Elementary Education: Content Knowledge (0014)" with a passing score of 148; or~~

~~(b) Beginning September 1, 2012.~~] An applicant for Elementary certification (grades P-5) shall take "Elementary Education: Multi-Subjects Test (5031)" with the following passing scores on the corresponding test sections:

(a)[~~1.~~] "Reading and Language Arts (5032)" – 165;

(b)[~~2.~~] "Mathematics (5033)" – 164;

(c)[~~3.~~] "Social Studies (5034)" – 155; and

(d)[~~4.~~] "Science (5035)" – 159.

(3) An applicant for certification at the middle school level (grades five (5) through nine (9)) shall take the content test or tests based on the applicant's content area or areas with the corresponding passing scores as identified in this subsection:

(a) Middle School English and Communications:

1. "Middle School English Language Arts (0049)" - 158; or

2. "Middle School English Language Arts (5049)" – 158;

(b) Middle School Mathematics: "Middle School Mathematics (0069)" - 148;

(c) Middle School Science: "Middle School Science (0439)" - 144; or

(d) Middle School Social Studies:

1. "Middle School Social Studies (0089)" – 149; or

2. "Middle School Social Studies (5089)": - 149.

(4) An applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take the content test or tests corresponding to the applicant's content area or areas with the passing scores identified in this subsection:

(a) Biology:

1. "Biology: Content Knowledge (0235)" - 146; or

2. "Biology: Content Knowledge (5235)" – 146;

(b) Chemistry:

1. "Chemistry: Content Knowledge (0245)" - 147; or

2. "Chemistry: Content Knowledge (5245)" – 147;

(c) Earth Science:

1. "Earth and Space Sciences: Content Knowledge (0571)" - 147; or

2. "Earth and Space Sciences: Content Knowledge (5571)" - 147;

(d) English:

1.[~~ Until August 31, 2012:~~

~~a. "English Language, Literature and Composition: Content Knowledge (0041)" - 160; and~~

~~b. "English Language, Literature and Composition Essays (0042)" - 155; or~~

~~2. Beginning September 1, 2012,~~] "English Language, Literature and Composition: Content and Analysis (0044)" – 166; or

2. "English Language, Literature and Composition: Content and Analysis (5044)" – 166;

(e) Mathematics:

1. a. "Mathematics: Content Knowledge (0061)" - 125; or

b. "Mathematics: Content Knowledge (5061)" - 125; and

2. "Mathematics: Proofs, Models and Problems, Part 1 (0063)" - 141;

(f) 1. Physics: "Physics: Content Knowledge (0265)" - 133; or

2. "Physics: Content Knowledge (5265)" - 133; or

(g) Social Studies:

1.[~~ Until August 31, 2012:~~

~~a. "Social Studies: Content Knowledge (0081)" - 151; and~~

~~b. "Social Studies: Interpretation of Materials (0083)" – 159; or~~

~~2. Beginning September 1, 2012,~~] "Social Studies: Content and Interpretation (0086)" – 153; or

2. "Social Studies: Content and Interpretation (5086)" – 153.

(5) An applicant for certification in all grades shall take the content test or tests corresponding to the applicant's area or areas of specialization identified in this subsection, and, if a passing score is established in this subsection, the applicant shall achieve the passing score or higher:

(a) Art:[~~1. Until August 31, 2012:~~

~~a. "Art: Content Knowledge (0133)" - 158; and~~

~~b. "Art Making (0131)" - 154; or~~

~~2. Beginning September 1, 2012,~~] "Art: Content and Analysis (0135)" – 161;

(b) Chinese: "Chinese (Mandarin): World Language (5665)" – 164;

(c) French: "French: World Language (5174)" - 162;

(d)[~~(c)~~] German: "German: World Language (5183)" - 163;

(e)[~~(d)~~] Health: "Health Education (0550)" - 630;

(f)[~~(e)~~] Health and Physical Education:

1. "Health and Physical Education: Content Knowledge (0856)" - 156; and

2. "Physical Education: Movement Forms - Analysis and Design (0092)" - 151;

(g)[~~(f)~~] Integrated Music:

1. Until August 31, 2013:

a. "Music: Content Knowledge (0113)" - 154; and

b.[~~2.~~] "Music: Concepts and Processes (0111)" - 145; or

2. Beginning September 1, 2013, "Music: Content and Analysis (0114)" – 162.

(h)[~~(g)~~] Instrumental Music:

1. Until August 31, 2013:

a. "Music: Content Knowledge (0113)" - 154; and

b.[~~2.~~] "Music: Concepts and Processes (0111)" - 145; or

2. Beginning September 1, 2013, "Music: Content and Analysis (0114)" – 162.

(i)[~~(h)~~] Vocal Music:

1. Until August 31, 2013:

a. "Music: Content Knowledge (0113)" - 154; and

b.[~~2.~~] "Music: Concepts and Processes (0111)" - 145; or

2. Beginning September 1, 2013, "Music: Content and Analysis (0114)" – 162.

(j)[~~(i)~~] Latin: "Latin (0601)[~~(0600)~~]" – 166[~~700~~];

(k)[~~(j)~~] Physical Education:

1.[~~a. Until August 31, 2012, "Physical Education: Content Knowledge (0091)" - 147; and~~

~~b. "Physical Education: Movement Forms-Analysis and Design (0092)" - 151; or~~

~~2. Beginning September 1, 2011,~~] "Physical Education: Content and Design (0095)" - 169; or

2. "Physical Education: Content and Design (5095)" - 169;

(l)[~~(k)~~] School Media Librarian:

1. "Library Media Specialist (0311)" - 156; or

2. "Library Media Specialist (5311)" - 156;

(m)[~~(l)~~] School Psychologist: "School Psychologist (0401)" - 161; or

(n)[~~(m)~~] Spanish: "Spanish: World Language (5195)" - 168.

(6) Except as provided in subsection (7) of this section, an applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) Communication Disorders:

1.a.[~~Until August 31, 2012, "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; or~~

~~b. Beginning September 1, 2011,~~] "Special Education: Core Content Knowledge and Applications (0354)" - 151; or

b. "Special Education: Core Content Knowledge and Applications (5354)" - 151; and

2.a. "Speech-Language Pathology (0330)" - 600; or

b. "Speech-Language Pathology (5330)" – 600;

(b) Hearing Impaired:

1.a.[~~Until August 31, 2012, "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; or~~

~~b. Beginning September 1, 2011,~~] "Special Education: Core Knowledge and Applications (0354)" - 151; or

b. "Special Education: Core Knowledge and Applications (5354)" - 151; and

2.a. Until August 31, 2013, "Education of Deaf and Hard of Hearing Students (0271)" - 167; or

b. Beginning September 1, 2013, "Special Education: Education of Deaf and Hard of hearing Students (0272)" – 160;

(c) Hearing Impaired With Sign Proficiency:

1[~~.a. Until August 31, 2012, "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; or~~

~~b. Beginning September 1, 2011,~~] "Special Education: Core Knowledge and Applications (0354)" - 151;

2.a. Until August 31, 2013, "Education of Deaf and Hard of Hearing Students (0271)" - 167; or

b. Beginning September 1, 2013, "Special Education: Education of Deaf and Hard of hearing Students (0272)" – 160; and

3. One (1) of the following tests with a passing score of Intermediate Level:

a. "Sign Communication Proficiency Interview (SCPI)"; or

b. "Educational Sign Skills Evaluation (ESSE)";

(d) Learning and Behavior Disorders:

1.[~~Until August 31, 2012:~~

~~a. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and~~

~~b. "Education of Exceptional Students: Mild to Moderate Disabilities (0542)" - 172; or~~

~~2. Beginning September 1, 2011,~~] "Special Education: Core Knowledge and Mild to Moderate Applications (0543)" - 158; or

2. "Special Education: Core Knowledge and Mild to Moderate Applications (5543)" - 158;

(e) Moderate and Severe Disabilities:

1.[~~Until August 31, 2012:~~

~~a. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and~~

~~b. "Education of Exceptional Students: Severe to Profound Disabilities (0544)" - 156; or~~

~~2. Beginning September 1, 2011,~~] "Special Education: Core Knowledge and Severe to Profound Applications (0545)[~~of Mild to Moderate Applications (0543)~~]" - 158; or

2. "Special Education: Core Knowledge and Severe to Profound Applications (5545)" – 158;

(f) Visually Impaired:

1.a. [~~Until August 31, 2012, "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; or~~

~~b. Beginning September 1, 2011,~~] "Special Education: Core Knowledge and Applications (0354)" - 151; or

b. "Special Education: Core Knowledge and Applications (5354)" - 151; and

2.a. Until August 31, 2013, "Teaching Students with Visual Impairments (0281)" – 161; or

b. Beginning September 1, 2013, "Special Education: Teaching Students with Visual Impairments (0282)" - 163.

(7) A holder of an exceptional child certificate in Learning and Behavior Disorders or Moderate and Severe Disabilities who is seeking additional certification for any exceptional children teaching certificate listed in subsection (6) of this section shall not be required to take:

(a) "Education of Exceptional Students: Core Content Knowledge (0353);" [~~or~~]

(b) "Special Education: Core Knowledge and Applications (0354);"or

(c) "Special Education: Core Knowledge and Applications (5354)".

(8)(a) Except as provided in paragraph (b) of this subsection, an applicant for Career and Technical Education certification to teach in grades five (5) - twelve (12) shall take the content test or tests corresponding to the applicant's area or areas of specialization identified in this paragraph, and, if a passing score is established in this paragraph, the applicant shall achieve the passing score or higher:

1. Agriculture: "Agriculture (0700)" - 520;

2. a. Business and Marketing Education: "Business Education (0101)" - 154; or

b. Business and Marketing Education: "Business Education (5101)" - 154;

3.a. Family and Consumer Science: "Family and Consumer Sciences (0121)" - 162; or

b. Family and Consumer Science: "Family and Consumer Sciences (5121)" - 162; or

4. Engineering and Technology Education:[~~a. Until August 31, 2012, "Technology Education (0050)" – 600, or~~

~~b. Beginning September 1, 2012,~~] "Technology Education (0051)" - 159.

(b) An applicant for Industrial Education shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in 16 KAR 6:020.

(9) An applicant for a restricted base certificate in the following area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) English as a Second Language: "English to Speakers of Other Languages (0361)" - 157;

(b) Speech/Media Communications: "Speech Communication (0221)" - 146; or

(c) Theater: "Theatre (0641)[~~(0640)~~]" – 162[~~630~~].

(10) An applicant for an endorsement in the following content area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the passing scores identified in this subsection:

(a) American Sign Language: "American Sign Language Proficiency Interview (ASLPI)" administered by the Galludet University – 3+;

(b) English as a Second Language: "English to Speakers of Other Languages (0361)" - 157;

(c) Learning and Behavior Disorders, grades 8 - 12:

1.[~~Until August 31, 2012, "Education of Exceptional Students: Mild to Moderate Disabilities (0542)" - 172; or~~

~~2. Beginning September 1, 2011,~~] "Special Education: Core Knowledge and Mild to Moderate Applications (0543)" - 158; or

2. "Special Education: Core Knowledge and Mild to Moderate Applications (5543)" - 158;

(d) Literacy Specialist: 1.[~~Until August 31, 2012, Literacy Specialist: "Reading Specialist (0300)" – 520; or~~

~~2. Beginning September 1, 2012,~~] "Reading Specialist (0301)" – 164; or

2. "Reading Specialist (5301)" – 164;

(e) Gifted Education, grades primary - 12: "Gifted Education (0357)" - 152; or

(f) Reading Primary through Grade 12:

1. "Teaching Reading (0204)" – 153; or

2. "Teaching Reading (5204)" - 153.

Section 3. In addition to the content area test or tests established in Section 2 of this administrative regulation, each new teacher shall take the pedagogy test and meet the passing score identified in this section that corresponds to the grade level of certification sought. If a certified teacher is seeking additional certification in any area, the applicant shall not be required to take an additional pedagogy test.

(1) An applicant for Elementary certification (grades primary – 5) shall take one (1) of the following tests and achieve the corresponding passing score or higher:

(a) "Principles of Learning and Teaching: Grades kindergarten - six (6) (0622)" – 160; or

(b) "Principles of Learning and Teaching: Grades kindergarten - six (6) (5622)" – 160.[~~(a) Until August 31, 2012, an applicant for Elementary certification (grades primary - 5) shall take "Principles of Learning and Teaching: Grades Kindergarten - 6 (0522)", with a passing score of 161; or~~

~~(b) Beginning September 1, 2012, an applicant for Elementary certification (grades primary – 5) shall take "Principles of Learning and Teaching: Grades kindergarten - six (6) (0622)" with a passing score of 160.~~]

(2) An applicant for certification at the middle school level (grades five (5) through nine (9)) shall take one (1) of the following tests and achieve the corresponding passing score or higher:

(a) "Principles of Learning and Teaching: Grades 5 - 9 (0623)" – 160; or

(b) "Principles of Learning and Teaching: Grades 5 - 9 (5623)" – 160.[~~(a) Until August 31, 2012, an applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades 5 - 9 (0523)", with a passing score of 161; and~~

~~(b) Beginning September 1, 2012, an applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades 5 - 9 (0623)", with a passing score of 160.~~]

(3) An applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take one (1) of the following tests and achieve the corresponding passing score or higher:

(a) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0624)" - 160; or

(b) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (5624)" – 160.[~~(a) Until August 31, 2012, an applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161; or~~

~~(b) Beginning September 1, 2012, an applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0624)", with a passing score of 160.~~]

(4) An applicant for certification in all grades with a content area identified in Section 2(5) of this administrative regulation shall take one (1) of the following tests and achieve the corresponding passing score or higher:

(a) "Principles of Learning and Teaching: Grades kindergarten - six (6) (0622)" – 160;

(b) "Principles of Learning and Teaching: Grades kindergarten - six (6) (5622)" – 160;

(c) "Principles of Learning and Teaching: Grades 5 - 9 (0623)" – 160;

(d) "Principles of Learning and Teaching: Grades 5 - 9 (5623)" – 160;

(e) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0624)" - 160; or

(f) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (5624)" – 160.[~~either:~~

~~(a)1. Until August 31, 2012, "Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)", with a passing score of 161; or~~

~~2. Beginning September 1, 2012, an applicant for Elementary certification (grades primary – 5) shall take "Principles of Learning and Teaching: Grades kindergarten - six (6) (0622)" with a passing score of 160;~~

~~(b) 1. Until August 31, 2012, "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)", with a passing score of 161; or~~

~~2. Beginning September 1, 2012, an applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades 5 - 9 (0623)", with a passing score of 160; or~~

~~(c) 1. Until August 31, 2012, "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161; or~~

~~2. Beginning September 1, 2012, an applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0624)", with a passing score of 160.~~]

(5) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy test established in this section. The content area test or tests established in Section 2 of this administrative regulation shall fulfill the pedagogy test requirement for a teacher of exceptional children.

(6) An applicant for Career and Technical Education certification in grades five (5) through twelve (12) shall take one (1) of the following tests and receive the identified passing score:

(a) "Principles of Learning and Teaching: Grades kindergarten - six (6) (0622)" – 160;

(b) "Principles of Learning and Teaching: Grades kindergarten - six (6) (5622)" – 160;

(c) "Principles of Learning and Teaching: Grades 5 - 9 (0623)" – 160;

(d) "Principles of Learning and Teaching: Grades 5 - 9 (5623)" – 160;

(e) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0624)" - 160; or

(f) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (5624)" – 160.[~~either:~~

~~(a) 1. Until August 31, 2012,"Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)", with a passing score of 161; or~~

~~2. Beginning September 1, 2012, an applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades 5 - 9 (0623)", with a passing score of 160; or~~

~~(b) 1. Until August 31, 2012, "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161; or~~

~~2. Beginning September 1, 2012, an applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0624)", with a passing score of 160.~~

~~(7) An applicant for a restricted base certificate shall take one (1) of the following pedagogy tests corresponding to the grade range of the specific restricted base certificate:~~

~~(a) 1. Until August 31, 2012,"Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)", with a passing score of 161; or~~

~~2. Beginning September 1, 2012, an applicant for Elementary certification (grades primary – 5) shall take "Principles of Learning and Teaching: Grades kindergarten - six (6) (0622)" with a passing score of 160;~~

~~(b) 1. Until August 31, 2012,"Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)", with a passing score of 161; or~~

~~2. Beginning September 1, 2012, an applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades 5 - 9 (0623)", with a passing score of 160; or~~

~~(c) 1. Until August 31, 2012,"Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", with a passing score of 161; or~~

~~2. Beginning September 1, 2012, an applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0624)", with a passing score of 160.~~]

Section 4. Assessment Recency. (1) A passing score on a test established at the time of administration shall be valid for the purpose of applying for certification for five (5) years from the test administration date.

(2) A teacher who fails to complete application for certification to the Education Professional Standards Board within the applicable recency period of the test and with the passing score established at the time of administration shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(3) The test administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5. (1) An applicant for initial certification shall take the assessments on a date established by:

(a) The Educational Testing Service; or

(b) The agency established by the Education Professional Standards Board as the authorized test administrator.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the Kentucky Education Professional Standards Board and to the appropriate teacher preparation institution where the applicant received the relevant training.

(3)(a) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration.

(b) An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 6. An applicant shall pay the appropriate examination fee established by the Educational Testing Service or other authorized test administrator for each relevant test required to be taken.

Section 7. An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake the test or tests during one (1) of the scheduled test administrations.

Section 8. The Education Professional Standards Board shall collect data and conduct analyses of the scores and institutional reports provided by the Educational Testing Service or other authorized test administrator to determine the impact of these tests.

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: October 15, 2012

FILED WITH LRC: November 1, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2012 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the written examination prerequisites and the corresponding passing scores for teacher certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to teacher candidates of the assessment requirements for obtaining and maintaining a teaching certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 places the responsibility of selecting the assessments and determining the minimum acceptable level of achievement on each assessment on the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the required teacher certification assessments and their corresponding minimum acceptable scores.

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

(a) How the amendment will change this existing administrative regulation: This amendment replaces outgoing assessments with the newly created. Special Education: Education of Deaf and Hard of Hearing Students (0272), Special Education: Teaching Students with Visual Impairments (0282), and Music: Content and Analysis (0114.) This amendment adopts Chinese (Mandarin): World Language (5665) as the required assessment to receive a Chinese World Language teaching certificate. This amendment also adopts new minimum successful scores for Latin (6010) and Theater (0641) which have been restructured under a new scoring system. The option of computer-delivered tests has been included in this amendment for tests which have a computer-delivered option. Finally, outdated language has been removed to ensure the administrative regulation's clarity.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the required assessments and corresponding scores are adequately set to produce the most competent educators.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statues, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the required assessments and corresponding passing scores for Kentucky teacher certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment more closely aligns assessment options with teacher preparation program requirements and opportunities within an actual school setting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts, 30 educator preparation programs, and educators seeking new and additional teacher certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will not be required to take any additional action. The educator preparation programs will need to continue to direct students to this regulation or the Education Professional Standards Board website for current assessment requirements. Applicants will need to continue to refer to this regulation or the Education Professional Standards board website for current assessment requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by the clarifications to the regulation. The districts will be positively affected by a supply of teachers who are competent in their content area.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) 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 Education Professional Standards Board, public colleges and universities, and the 174 public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.027, KRS 161.028, KRS 161.030.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of 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: This is not a fee generating or a cost incurring program, but requires applicants for certification to take and pass certain assessments to ensure the teaching force meets the minimum standards of competency established by the Education Professional Standards Board.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 8:030. Continuing Education Option for certificate renewal and rank change.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.1211

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), (f), (q), 161.030, 161.095, 161.1211

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.095 requires the Education Professional Standards Board to promulgate an administrative regulation establishing procedures for a teacher to maintain a certificate by successfully completing meaningful continuing education. KRS 161.028(1)(f), and 161.030 authorize the board to issue and renew certification for professional school personnel in the board, and KRS 161.028(1)(q) authorizes the board to charge reasonable certification fees. KRS 161.1211 establishes certificate ranks and requires the board to issue rank classifications. This administrative regulation establishes the procedures for the continuing education option for certificate renewal and rank change.

Section 1. Procedures for the first and second renewal of the professional teaching certificate established in 16 KAR 2:010 shall require completion of:

(1) The continuing education option established in this administrative regulation; or

(2) A planned fifth-year program established in 16 KAR 8:020.

Section 2. The Continuing Education Option shall only be used to obtain either Rank II or Rank I.

Section 3. Program Requirements. (1) The continuing education option shall consist of four (4) phases:

(a) Phase one (1): Completion of an instructional seminar established in Section 4 of this administrative regulation as of this administrative regulation and development of a plan for job-embedded professional development;

(b) Phase two (2): Content exploration and research;

(c) Phase three (3): Student instruction and assessment; and

(d) Phase four (4): Professional demonstration and publication.

(2) In addition to the completion of the four (4) phases established in subsection (1)(a) through (d) of this section, a candidate for the Continuing Education Option shall:

(a) Develop a leadership project aligned to the job-embedded professional development established in subsection (1)(a) of this section; <u>and</u>

(b) Complete a minimum of six (6) graduate credit hours, with an average grade point average of three and zero-tenths (3.0) aligned to the job-embedded professional development established in subsection (1)(a) of this section[~~; and~~

~~(c) Complete the "Take One!" component for National Board Teacher Certification with a successful score~~].

Section 4. (1) A candidate for the continuing education option for certificate renewal and rank change shall:

(a) Attend board-approved a program orientation meeting; and

(b) Successfully complete a board-approved seminar on how to build a plan for job-embedded professional development.

(2)(a)1. A school district, group of districts, or Kentucky postsecondary institution with an accredited educator preparation program may make application to the Education Professional Standards Board for approval to sponsor a seminar on how to build a plan for job-embedded professional development.

2. The Education Professional Standards Board may sponsor a seminar on how to build a plan for job-embedded professional development in a district or group of districts in which a seminar is not otherwise offered.

(b) The seminar on how to build a plan for job-embedded professional development shall be led by a continuing education option coach.

(c) The seminar on how to build a plan for job-embedded professional development may be a blend of:

1. Web-based instruction; and

2. Face-to-face cohort meetings.

(d) The Education Professional Standards Board may provide Web-based instruction through an on-line module at www.KYEducators.org.

(e) A seminar sponsor shall offer face-to-face cohort meetings at least two (2) times per month during the plan building seminar.

(3) Following completion of phase one (1) of the continuing education option, a seminar sponsor shall continue face-to-face cohort meetings on a monthly basis.

(4) Completion of the first phase of the Continuing Education Option shall allow the candidate to receive first renewal of the candidate's certificate beginning July 30, 2010.

(5) Payment of seminar tuition.

(a)1. Tuition for the on-line module provided by the Education Professional Standards Board shall be $150; and

2. The on-line module fee shall be paid to the Education Professional Standards Board at the time of enrollment.

(b)1. Tuition for the cohort meetings shall be $1,100; and

2. The cohort meeting fee shall be paid to the board-approved seminar sponsor.

(c)1. Seminar tuition shall be nonrefundable.

2. A cohort meeting fee may be transferred to another seminar sponsor upon agreement between both sponsors.

(6)(a) Upon completion of the seminar, the Continuing Education Option candidate shall design an individual job-embedded professional development plan.

(b) The job-embedded professional development plan shall:

1. Focus on a professional growth need identified by the teacher with consideration given to the needs identified in the school's consolidated plan, student assessment results, and community resources;

2. Include goals correlated to:

a. Each of the ten (10) Kentucky Teacher Standards established in 16 KAR 1:010;

b. The Kentucky Teacher Standards Advanced Level Performance in the CEO Professional Development Portfolio Rubric; and

c. The teacher's individual professional growth needs established in clause 1. of this paragraph;

3. Include a timeline in which the candidate shall complete all phases of the continuing education option. The timeline shall not:

a. Be less than eighteen (18) months; or

b. Be more than four (4) years; and

4. Be reviewed by the continuing education option coach for the seminar cohort.

c. The continuing education option coach shall:

1. Review the plans using the CEO Professional Development Plan Scoring Rubric; and

2. Provide guidance to the candidate for submitting the plan to the Education Professional Standards Board for scoring.

(d)1. The candidate shall submit the plan to the Education Professional Standards Board for review.

2. The candidate may resubmit the plan for an additional scoring if the continuing education scoring team has provided evidence of a deficiency in the plan.

3. The candidate shall submit a scoring fee of $455 to the Education Professional Standards Board with the plan.

4. If a candidate submits a plan for additional scoring, the candidate shall submit a rescoring fee of fifty (50) dollars to the Education Professional Standards Board with the plan.

(7)(a) The candidate shall participate in a job-embedded professional development experience with documented outcomes that demonstrate the accomplishment of the established goals.

(b) A job-embedded professional development experience shall include a combination of:

1.a. A minimum of six (6) university graduate credits; or

b. With approval from Education Professional Standards Board staff, a combination of a minimum of six (6) university graduate or undergraduate content course credits that meet the goals established in the candidate's job-embedded professional growth plan;

2. Research;

3. Field-experience;

4. Professional development activities;

5. Interdisciplinary networking and consultations; and

6.[~~The "Take One!" component aligned with the candidate's area of certification as established by the National Board of Professional Teaching Standards; and~~

~~7.~~] A leadership project.

(8)(a) The evidence of accomplishment of the goals identified in the plan shall be documented by the candidate in a portfolio.

(b) The candidate shall present the portfolio to the Education Professional Standards Board for review and scoring.

(c) The documentation in the portfolio shall provide evidence:

1. That all Kentucky teacher standards Advanced Level Performance Indicators have been met;

2. Of the effects on student learning; and

3. Of the professional growth over time in:

a. Content knowledge;

b. Instructional and student assessment practices; and

c. Professional demonstration and publication skills.

(d) The portfolio shall be presented using a variety of media, which may include electronic recordings.

(e) The portfolio shall be submitted to the Education Professional Standards Board at least one (1) year in advance of the expiration date of the teacher's certificate.

(f) The portfolio shall be submitted in either:

1. A traditional paper format with other media; or

2. An electronic format.

(g) A portfolio shall not exceed three (3) four (4) inch binders in size or its electronic equivalent.

Section 5. (1) Initial application for the continuing education option program shall be made through a seminar sponsor approved by the Education Professional Standards Board.

(2) The approved seminar sponsor shall report all enrolled applicants to the Education Professional Standards Board.

Section 6.(1) A team of two (2) scorers approved by the Education Professional Standards Board shall review and score the continuing education portfolio.

(2) The scorers shall be selected by the Education Professional Standards Board in accordance with Section 4(2)(a) from a cadre of educators representing teachers, principals, central office instructional personnel, and higher education faculty.

(3) The two (2) person scoring team shall:

(a) Include a teacher certified in the same grade range and content area as the continuing education option candidate;

(b) Score the candidate's portfolio using the CEO Professional Development Portfolio Rubric;

(c)1. Recommend the teacher for certificate renewal to the Education Professional Standards Board prior to the expiration date of the certificate; or

2. Report results to the Education Professional Standards Board using the scoring rubric to indicate which standards were not met; and

(d) Receive training from[~~Be trained by~~] the Education Professional Standards Board to score the portfolios in a consistent and reliable manner.

(4)(a) If the two (2) person scoring team cannot reach consensus in the review process, a third scorer shall score the portfolio.

(b) An average of the scores shall determine whether the portfolio contained evidence that the ten (10) Kentucky Teaching Standards established in 16 KAR 1:010 were met.

(5)(a) If the teacher's portfolio does not contain evidence that all ten (10) Teacher Standards established in 16 KAR 1:010 have been met, the teacher may resubmit a partial portfolio for rescoring, which shall contain documented evidence on the unmet standard or standards.

(b) The rescoring process shall follow the same procedures as the initial scoring process established in this section of this administrative regulation.

(c) The teacher shall receive feedback from the initial scoring regarding additional evidence that may be needed to show that goals were accomplished and that all Teacher Standards established in 16 KAR 1:010 were met.

Section 7. (1) A teacher following the continuing education option to the fifth-year program for certificate renewal and rank change shall complete the program by the end of the second certificate renewal period.

Section 8. Payment of Fee for Scoring the Portfolio. (1) A scoring fee of $1,400 shall be assessed to each continuing education option candidate.

(2) The fee shall be used to pay expenses for the actual cost of administration of the continuing education option program including the costs associated with the following:

(a) The evaluation of approved seminar provider programs;

(b) Training the continuing education option coaches who lead the seminars;

(c) Training and compensating the portfolio reading team members; and

(d) The initial scoring of the portfolio.

(3) Payment shall be made to the Education Professional Standards Board.

(4) The full fee shall be submitted with the portfolio for scoring.

(5) The initial scoring fee shall provide for one (1) scoring of all parts of the portfolio.

(6)(a) A fee of $140 shall be assessed for each unmet standard that requires rescoring.

(b) The rescoring fee, if applicable, shall be submitted to the Education Professional Standards Board with the revised portfolio is.

Section 9.[~~(1) A candidate who submitted a professional development plan prior to July 30, 2010 shall submit a portfolio for scoring to the Education Professional Standards Board on the following schedule:~~

~~(a) Candidates enrolled in the Continuing Education Option in calendar year 2005 shall submit the portfolio by January 15, 2010;~~

~~(b) Candidates enrolled in the Continuing Education Option in calendar year 2006 shall submit the portfolio by January 15, 2011; and~~

~~(c) Candidates enrolled in the Continuing Education Option in calendar year 2007 shall submit the portfolio by January 15, 2012.~~

~~(2) The candidate's portfolio shall be scored using the rubric in effect when the candidate enrolled in the continuing education option program.~~

~~(3) A candidate under this section shall not be charged an additional fee for rescoring a previously submitted portfolio.~~

~~(4) The candidate under this section shall be provided an opportunity to participate in a cohort meeting established in Section 4 of this administrative regulation.~~

~~(5) The candidate under this section shall be offered coaching by an approved continuing education option coach.~~

~~Section 10.~~] (1) Portfolios shall be scored by the Education Professional Standards Board on an annual basis.

(2) A candidate shall have been enrolled in the continuing education option program for at least eighteen (18) months prior to submission of the portfolio to the Education Professional Standards Board for scoring.

(3) A candidate shall submit a portfolio to the Education Pro-

fessional Standards Board for initial scoring between July 1 and July 15.

(4) The date of portfolio submission shall be either:

(a) The day the portfolio is hand-delivered to the Education Professional Standards Board offices; or

(b) The date of the postmark.

(5)(a) A portfolio that requires rescoring shall be resubmitted during one (1) of the rescoring windows of October 1 through 15[~~5~~] or January 1 through 15.

(b) Portfolios not submitted within the rescoring window shall be resubmitted in accordance with the schedule established in subsection (3) of this section.

(6) All portfolios shall become the property of the Education Professional Standards Board.

(7)(a) The Education Professional Standards Board shall provide electronic tracking of all portfolios to identify cases of plagiarism.

(b) Instances of plagiarism shall be reported to the Education Professional Standards Board for disciplinary action.

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

(a) "CEO Professional Development Plan Scoring Rubric", 2009; and

(b) "CEO Professional Development Portfolio Rubric", 2009;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson

APPROVED BY AGENCY: October 15, 2012

FILED WITH LRC: November 1, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2012 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for a teacher to maintain a certificate and obtain a rank change by successfully completing meaningful continuing education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to candidates of the program requirements for the continuing education option for certificate renewal and rank change.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1)(f), and 161.030 authorize the board to issue and renew certification for professional school personnel in the board, and KRS 161.028(1)(q) authorizes the board to charge reasonable certification fees. KRS 161.1211 establishes certificate ranks and requires the board to issue rank classifications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the steps necessary to successfully complete the continuing education option for certificate renewal and rank change.

(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 removes the requirement for a candidate to register and complete "Take One!" This amendment also removes language and sunset language regarding the previous incarnation of the continuing education option.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide notice to candidates of the program requirements for the continuing education option for certificate renewal and rank change.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1)(f), and 161.030 authorize the board to issue and renew certification for professional school personnel in the board, and KRS 161.028(1)(q) authorizes the board to charge reasonable certification fees. KRS 161.1211 establishes certificate ranks and requires the board to issue rank classifications.

(d) How the amendment will assist in the effective administration of the statutes: This amendment removes the "Take One!" completion requirement as part of the continuing education option. Due to the timing of the registration for "Take One!" and the date of the score release, a candidate could not complete the program within the required time frame.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts, 30 educator preparation programs, and educators seeking certificate renewal and rank change.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will not be required to take any additional action. The educator preparation programs will need to continue to direct students to this administrative regulation or the Education Professional Standards Board website for current certificate renewal requirements. Educators will need to consult this administrative regulation for information regarding the continuing education option.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by the clarifications to the regulation. The districts will be positively affected by an increase is educators who have engaged in focused professional development to enhance their teaching abilities.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply

since all candidates are required to complete the same 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? The Education Professional Standards Board, public colleges and universities, and the 174 public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028, 161.030, 161.095, 161.1211

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of 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: This is not a fee generating or a cost incurring program, but sets the requirements for completion of the continuing education option for certificate renewal and rank change.

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(Amendment)

102 KAR 1:310. Benefit eligibility conditions for members providing part-time and substitute services.

RELATES TO: KRS 161.520, 161.655, 161.661, 161.663

STATUTORY AUTHORITY: KRS 161.310, 161.612

NECESSITY, FUNCTION AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Kentucky Teachers' Retirement System to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.612 requires the board to adopt eligibility conditions under which members providing part-time or substitute services may participate in the benefits provided under KRS 161.520, 161.655, 161.661, and 161.663. This administrative regulation provides those conditions.

Section 1. A[~~Any~~] member who provides part-time or substitute teaching services and who has never been an annuitant of the retirement system shall be eligible to apply for disability retirement benefits provided under KRS 161.661 and 161.663, and his or her beneficiary and any survivor eligible to apply for life insurance benefits provided under KRS 161.655 and survivor benefits provided under KRS 161.520, only if the member meets the eligibility conditions set forth in this section.[~~below:~~]

(1) The member shall have completed at least sixty-nine (69) percent of a full contract year that would be completed by a member employed on a full-time basis in the same position in order to become eligible to apply for disability retirement, and for his or her beneficiary or any survivor to be eligible to apply for life insurance and survivor benefits. Employment shall be in a position from which contributions were made to Kentucky Teachers' Retirement System.

(2) If the position does not provide for full-time employment, the member shall be required to complete at least sixty-nine (69) percent of the normal school calendar for a certified, full-time teacher in the school district in which the member is employed. Full-time employment shall not require less than the normal school calendar for a certified, full-time teacher in the district in which the member is employed.

(3) The member shall be accredited days by adding his or her total number of hours worked in one (1) fiscal year and dividing that number by the number of hours that are required under a normal, full-time contract to calculate the number of full-time days. If this calculation results in a fractional number of days, the number shall be rounded down to the next whole number of days.

(4) A member who is employed in more than one (1) school district in the same fiscal year shall be required to complete a number of days at least equal to sixty-nine (69) percent of the school calendar in the district requiring the greatest number of days.

(5) Once the requisite number of days or equivalent days are worked for one (1) fiscal year, the member shall be eligible to apply for disability retirement, and his or her beneficiary and any survivor shall be eligible to apply for life insurance and survivor benefits, through the end of the next fiscal year immediately succeeding the fiscal year in which the eligibility conditions are met.

(6) For any member with less than five (5) years of active service in a position participating in the retirement system, the disabling condition or death shall be the result of a single, traumatic, physical injury directly related to his or her Kentucky Teachers' Retirement System-covered employment in order to be eligible to apply for disability retirement, and for his or her beneficiary or any survivor to be eligible to apply for life insurance and survivor benefits.

(7) A member with less than five (5) years of service credit in Kentucky Teachers' Retirement System, who has service credit in Kentucky Retirement Systems, shall not be eligible to apply for disability retirement and shall be eligible only for a refund on his or her account under the conditions of KRS 161.470(6), unless the member experiences a disabling condition as a result of the conditions required in subsection (6) of this section.

Section 2. A[~~Any~~] member who is employed part-time in a nonteaching position that requires certification or a four (4) year degree and who has never been an annuitant of the retirement system shall be eligible to apply for disability retirement benefits provided under KRS 161.661 and 161.663, and his or her beneficiary or any survivor eligible to apply for life insurance benefits provided under KRS 161.655 and survivor benefits provided under KRS 161.520, only if the member[~~he~~] meets the eligibility conditions set forth in this section.[~~below:~~]

(1) The member shall have completed at least sixty-nine (69) percent of the number of days required for full-time employment in the position in order to become eligible to apply for disability retirement, and for his or her beneficiary and any survivor to be eligible to apply for life insurance and survivor benefits. Employment shall be in a position from which contributions were made to Kentucky Teachers' Retirement System.

(2) If the position does not provide for full-time employment, the member shall be required to complete at least sixty-nine (69) percent of a normal full-time contract of 260 days in order to meet the eligibility conditions established in this administrative regulation. Full-time employment shall not require less than 220 working days.

(3) The member shall be accredited days by adding his or her total number of hours worked in one (1) fiscal year and dividing that number by the number of hours that are required under a normal, full-time contract to extrapolate the number of full-time days. If this calculation results in a fractional number of days, the number shall be rounded down to the next whole number of days.

(4) A member who is employed by more than one (1) employer in the same fiscal year shall be required to complete a number of days at least equivalent to sixty-nine (69) percent of the number days in the full-time position of the employer requiring the greatest

number of worked days.

(5) Once the requisite number of days or equivalent days are worked for one (1) fiscal year, the member shall be eligible to apply for disability retirement, and his or her beneficiary or any survivor shall be eligible to apply for life insurance and survivor benefits, through the end of the next fiscal year immediately succeeding the fiscal year in which the eligibility conditions are met.

(6) For any member with less than five (5) years of active service in a position participating in the retirement system, the disabling condition or death shall be the result of a single, traumatic, physical injury directly related to his or her Kentucky Teachers' Retirement System-covered employment in order to be eligible to apply for disability retirement, and for his or her beneficiary or any survivor to be eligible to apply for life insurance and survivor benefits.

(7) A member with less than five (5) years of service credit in Kentucky Teachers' Retirement System, who has service credit in Kentucky Retirement Systems, shall not be eligible to apply for disability retirement benefits and shall be eligible only for a refund of his or her account under the conditions of KRS 161.470(6), unless the member experiences a disabling condition as a result of the conditions required in subsection (6) of this section.

DR. TOM SHELTON, Chairperson

APPROVED BY AGENCY: September 17, 2012

FILED WITH LRC: November 15, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2012 at 9:00 a.m. at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2012, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 close of business January 2, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides eligibility conditions for members who provide part-time or substitute services to apply for disability retirement benefits, and for their eligible survivors to participate in life insurance and survivor benefits.

(b) The necessity of this administrative regulation: Members who provide part-time or substitute services are entitled by law to participate in disability retirement benefits, and their eligible survivors to participate in life insurance and survivor benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The KTRS Board of Trustees is mandated under KRS 161.612(2) to establish eligibility criteria for these benefits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes eligibility requirements in further detail as contemplated by KRS 161.612(2).

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

(a) How the amendment will change this existing administrative regulation: The amendment provides that members providing part-time or substitute services who have less than five (5) years of service credit in KTRS and who also have service in Kentucky Retirement Systems will not be eligible to apply for disability retirement and will be eligible only for a refund of their account, unless they suffer a single, traumatic, physical injury directly related to their KTRS covered employment.

(b) The necessity of the amendment to this administrative regulation: To provide eligibility requirements for disability retirement which[~~that~~] are reflective of the minimal retirement contributions of members with limited service credit.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes eligibility requirements for disability retirement for members with less than five (5) years of service credit in KTRS who also have service in Kentucky Retirement Systems and who provide part-time or substitute services.

(d) How the amendment will assist in the effective administration of the statutes: It will provide eligibility requirements for disability retirement for members with less than five (5) years of service in KTRS who also have service in Kentucky Retirement Systems and who provide part-time or substitute services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Members of the retirement system providing part-time or substitute services who have less than five (5) years of service credit in KTRS and who also have service in Kentucky Retirement Systems.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions required of the individuals identified in question three (3). The amendment simply provides that members providing part-time or substitute services who have less than five (5) years of service credit in KTRS and who also have service in Kentucky Retirement Systems will not be eligible to apply for disability retirement and will be eligible only for a refund of their account, unless they suffer a single, traumatic, physical injury directly related to their KTRS covered employment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question three (3). There are no additional benefits.

(7) 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: No additional funding is needed for the implementation and enforcement of the proposed administrative amendment.

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

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

(9) Tiering: Is tiering applied? Tiering is not applied, as the eligibility conditions for retirement apply equally to all members who provide part-time or substitute services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Teachers' Retirement System.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.470(6) and 161.612.

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 proposed regulation will not generate any additional revenue in the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The proposed amendment does generate any additional revenues or expenditures.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure and Certification for Dietitians and Nutritionists
(Amendment)

201 KAR 33:015. Application; approved programs.

RELATES TO: KRS 310.021, 310.031(1), (2)

STATUTORY AUTHORITY: KRS 310.041(1), (2), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.041 requires the Kentucky Board of Licensure for Dietitians and Nutritionists to promulgate administrative regulations and to review or reject the qualifications of all applicants for licensure and certification. This administrative regulation establishes the procedure for submitting an application for licensure or certification and establishes requirements for institutions to be approved by the board.

Section 1. Application. (1) An Application for Licensure or Certification shall be submitted to practice dietetics after the requirements established in KRS 310.021 are met.

(2) An Application for Licensure or Certification shall be submitted to practice nutrition after the requirements established in KRS 310.031 are met.

(3) Each Application for Licensure or Certification shall be accompanied by the nonrefundable application fee, established in 201 KAR 33:010.

(4) Each application shall be signed by the applicant.

(5)(a) Each application to practice dietetics shall include a copy of the applicant's current registration card issued by the Commission of Dietetic Registration.

(b) A membership card shall not constitute compliance with paragraph (a) of this subsection.

(6) Each application to practice nutrition shall include a certified copy of the official masters transcript.

(7) If the applicant is or was licensed or registered in another jurisdiction, the applicant shall cause to be submitted a complete Verification of Licensure in Other Jurisdictions form for all jurisdictions where the applicant is currently and has formerly been licensed or registered.

Section 2. Approved Programs. (1) A baccalaureate degree from a college or university approved by the board pursuant to KRS 310.021(3) or 310.031(2)(a) shall be a degree program that is listed as accredited by the Commission on Accreditation for Dietetics Education.

(2) If an applicant's baccalaureate degree is not listed as accredited by the Commission on Accreditation for Dietetics Education, then the applicant shall demonstrate at least forty-five (45) semester hours or sixty-eight (68) quarter hours, as evidenced by a certified copy of an academic transcript, of coursework at the baccalaureate or graduate level in addition to the hours required by KRS 310.031(2)(b). The coursework shall include content specific to each of the following areas:

(a) Communication;
(b) Counseling;
(c) Physical and biological sciences;
(d) Social sciences;
(e) Research;
(f) Food composition;
(g) Nutrient metabolism;
(h) Food systems management;
(i) Nutrition therapy;
(j) Lifecycle nutrition; and
(k) Healthcare systems.

(3) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall include only didactic hours of graduate credit specifically related to human nutrition. Examples include:

(a) Food sources of nutrients;
(b) Physiological and chemical processes of digestion, absorption and metabolism;
(c) Nutrient needs throughout the life cycle;
(d) Nutrition assessment processes;
(e) Pathophysiology of disease states;
(f) Medical nutrition therapy;
(g) Nutrient needs in exercise and fitness; and
(h) Nutrition in health and wellness.

(4) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall not include practicums, courses that are primarily obtained from work experiences, independent study, thesis, or dissertation credit hours.

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

(a) "Application for Licensure or Certification", 2012; and

(b) "Verification of Licensure in Other Jurisdictions", 2012[~~2009, is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

AVA H. EAVES, Board Chair

APPROVED BY AGENCY: October 23, 2012

FILED WITH LRC: October 31, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2012 at 9:00 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 January 2, 2013 at close of business (4:30 p.m.). 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 Lockett, Board Administrator, Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, PO Box 1370, Frankfort, Kentucky 40602, phone 502-564-3296, ext. 222, fax (502) 564-4818, email karenl.lockett@ky.gov.

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 310.021, KRS 310.031, and KRS 310.041(1).

(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 appropriate documentation necessary for licensing.

(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: It changes the documentation necessary when requesting licensure if one already holds licensure in another state.

(b) The necessity of the amendment to this administrative regulation: It changes the documentation necessary when requesting licensure if one already holds licensure in another state in order to allow the board to adequately review and applicant's credentials.

(c) How the amendment conforms to the content of the authorizing statutes: The board has broad authority to promulgate regulations related to licensing requirements.

(d) How the amendment will assist in the effective administration of the statutes: It will clarify the documentation necessary for the board to adequately review an applicant's qualification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1224 individuals are licensed by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals identified in question (3) will not be impacted.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(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 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? Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 310.041(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) 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 Licensure for Massage Therapy
(Amendment)

201 KAR 42:020. Fees.

RELATES TO: KRS 309.357, 309.362(2), (3)

STATUTORY AUTHORITY: KRS 309.355(3), 309.357

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357 requires the board to establish reasonable fees for the licensure of massage therapists. KRS 309.362(2) and (3) authorize the issuance of an inactive license and reinstatement. This administrative regulation establishes the fees relating to massage therapy (MT) licensure.

Section 1. Fee Payments. (1) All fees established in Section 2 of this administrative regulation shall be:

(a) Made payable as required by KRS 309.356 to the State Treasury; and

(b) Paid by:

1. Cashier's check;
2. Certified check;
3. Money order;
4. Personal check; or
5. Online payment by credit card, debit card, or electronic check.

(2) A payment for an application fee that is incorrect shall be returned to the applicant and the application shall not be posted until the correct fee is received.

(3) The application fee and the initial licensure fee established in Section 2(1) of this administrative regulation shall be nonrefundable.

(4) If it is determined that a refund of any fee is required, the refund shall be issued to the applicant or licensee.

Section 2. Fees. (1) The fee for an initial massage therapist license shall be $125.

(2)(a) The biennial renewal fee for a massage therapist license renewed on or before the renewal date shall be $100.

(b) If the license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late renewal shall be $150.

(c) If the license is renewed sixty-one (61) to ninety (90) days after the expiration of the license, the late renewal fee shall be $200.

(d) If a license is not renewed within ninety (90) days of expira-

tion of the license, the applicant shall comply with KRS 309.357(6).

(3) A licensee shall be in good standing with the board at the time the licensee elects inactive status.

(4)(a) The annual renewal date for an inactive license shall remain the original issue date of the license.

(b) The annual renewal fee for an inactive license shall be thirty-five (35) dollars.

(5) If the inactive license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late inactive renewal shall be fifty-two (52) dollars and fifty (50) cents.

(6) If the inactive license is renewed sixty-one (61) to ninety (90) days after the expiration of the license, the late renewal fee shall be seventy (70) dollars.

(7) The application fee for moving a license from Inactive to Active status shall be fifty (50) dollars and shall not be prorated.

(8) A licensee who elects inactive status or an inactive licensee electing to activate his or her license shall complete and submit an Application for Inactive or Return to Active Status in addition to the fee referenced in subsection (7) of this section.

Section 5. Incorporation by Reference. (1) "Application for Inactive or Return to Active Status" October, 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHERYL TURNER, Board Chair

APPROVED BY AGENCY: November 1, 2012

FILED WITH LRC: November 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 January 2, 2013 at the close of business. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Carolyn Benedict, Board Administrator, Board of Licensure for Massage Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296.

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 fees and processes related to renewal and initial issuance of licenses.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 309.355(3).

(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 requirements for issuance of licenses.

(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 creates a form for one changing from inactive to active status.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that an easily understood process is used for changing from active to inactive status.

(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 the process of the Board more easily understandable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2500 individuals are licensed by the Board. Approximately schools are certified as being in good standing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None unless they change between inactive and active status. If so, they will have a new form to complete.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will more readily understand the process they are to complete.

(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 Licensure for Massage Therapy.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(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 Licensure for Massage Therapy
(Amendment)

201 KAR 42:035. Application process, exam, and curriculum requirements.

RELATES TO: KRS 309.358, 309.359

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. The board is required to issue a license to an applicant meeting the standards established in KRS 309.358 or 309.359. This administrative regulation establishes the application process and curriculum requirements for licensure.

Section 1. An applicant for licensure as a massage therapist shall:

(1) File a completed, signed, and dated Application for Licensure as a Massage Therapist, and the [~~and~~] required documentation with the board, meeting the requirements set forth in KRS 309.358; and

(2) Pay the application fee as established in 201 KAR 42:020.

Section 2. To comply with KRS 309.358(4), an applicant shall submit to the board, at the time of application, an official transcript or certificate that shows the completion of at least 600 classroom hours, itemizing compliance with the clock hour requirements established in KRS 309.363(1).

Section 3. Examinations. (1) An examination shall be approved by the board as meeting the standard established in KRS 309.358(5) if the board determines that the examination:

(a) Has been scientifically constructed to be valid and objective;

(b) Reflects the curriculum content established in KRS 309.363(1);

(c) Has security procedures to protect the exam content; and

(d) Has clear application, reporting and appeal procedures.

(2) Approval of exams shall be noted in the board minutes and on the board Web[-] site.

(3) In accordance with KRS 309.358(5), the following examinations shall be considered approved by the board:

(a) The MBLEx or other exam administered by the Federation of State Massage Therapy Boards;

(b) The State of Ohio Massage Therapy Licensing Exam; [~~or~~]

(c) National Board Certification Agency (NBCA) Massage Therapy Certification Examination, level one; or

(d) The State of New York Massage Therapy Licensing Exam.

Section 4. Appeals. An applicant may appeal a decision denying his or her licensure application in accordance with KRS 309.362(4).

Section 5. Incorporation by Reference. (1) The "Application for Licensure as a Massage Therapist", October 2012,[~~2011,~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHERYL TURNER, Board Chair

APPROVED BY AGENCY: November 1, 2012

FILED WITH LRC: November 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 January 2, 2013 at the close of business. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Carolyn Benedict, Board Administrator, Board of Licensure for Massage Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296.

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 processes for applying for licensure.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 309.358 and KRS 309.355(3).

(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 requirements for licensure.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the form used to apply for licensure.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that application for licensure is an easily understood process.

(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 the process of the Board more easily understandable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2500 individuals are licensed by the Board. Approximately schools are certified as being in good standing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

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

entities identified in question (3): None; the process will be easier for new licensees.

(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 Licensure for Massage Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(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 Licensure for Massage Therapy
(Amendment)

201 KAR 42:040. Renewal.

RELATES TO: KRS 309.357(3), (4), (5), (6), 309.361, 309.362

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357(3) requires all licenses to be renewed. This administrative regulation establishes the requirements for renewal of licenses.

Section 1. A license to practice massage therapy shall be renewed upon:

(1) Payment of the biennial renewal fee as established in 201 KAR 42:020, Section 2(2), on or before the anniversary date of issue of license; and

(2) Submission to the board of the Application for Renewal form and the following written information:

(a) Current complete home address and telephone number;

(b) Current complete name, address, and telephone number of each location in which massage therapy service is provided;

(c) A list indicating completion of the continuing education units taken during the licensure renewal period as required by 201 KAR 42:110. The list shall:

1. Itemize the number of clock hours credited for each course; and

2. Designate the courses that fulfill the three (3) required hours of ethics training; and

(d) Confirmation that, since the license was issued or renewed, the licensee has not:

1. Been convicted of a felony;

2. Had his or her license disciplined and is not currently under disciplinary review in another state; or

3. Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) per KRS 164.772.

Section 2. A licensee convicted of a felony or disciplined in the interim period between issuance and renewal of the license, or between renewal periods, shall submit notice of the conviction or discipline to the board within sixty (60) days of the discipline or conviction.

Section 3. If payment and complete information are not received by the board on or before the anniversary date of the issuance of the license, the license shall expire and the person shall not practice nor represent themselves as a massage therapist in Kentucky.

Section 4. An expired license shall be renewed within ninety (90) days of expiration if the applicant submits:

(1) A completed Application for Renewal form;

(2) Documentation of successful completion of twenty-four (24) hours of continuing professional education, which:

(a) Includes studies in ethics, business practices, science, and techniques related to massage therapy;

(b) Have been credited within two (2) years prior to the renewal deadline; and

(c) Have not been previously used within the same renewal period to satisfy Kentucky license renewal requirements; and

(3) The appropriate fee for renewal, as required by 201 KAR 42:020, Section 2(2), (5), or (6).

Section 5. (1) Upon initial licensing, a licensee shall be furnished a wall certificate which shall be displayed at the primary massage therapy service location.

(2) A licensee shall provide verification of current licensure upon request if he or she is currently engaged in the practice of massage therapy, intends to engage within a reasonable time in the practice of massage therapy, or has engaged in the practice of massage therapy immediately prior to the request.

(3) Official verification of licensure status shall be available on the board's Web site.

Section 6. Reactivation Requirement for Inactive Status Massage Therapist. (1)(a) Before the expiration of five (5) years of inactive status, a licensee requesting to return to active status shall:

1. Provide proof to the board of continuing education required by KRS 309.362(3);

2. Complete the Application for Renewal; and

3. Pay the fee prescribed by 201 KAR 42:020, Section 2(7).

(b) The continuing education hours provided pursuant to paragraph (a)1 of this subsection may be used for the next regular renewal period.

(2) After more than five (5) years of inactive status, a person requesting to return to active status shall reapply as required by KRS 309.362(3).

Section 7. Incorporation by Reference. (1) "Application for

Renewal", October 2012,[~~September 2010~~,] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

CHERYL TURNER, Board Chair

APPROVED BY AGENCY: November 1, 2012

FILED WITH LRC: November 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 January 2, 2013 at the close of business. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Carolyn Benedict, Board Administrator, Board of Licensure for Massage Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296.

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 requirements for licensure renewal.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 309.355(3).

(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 establishing renewal requirements and processes.

(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 edits the form to be filled out by applicants for renewal.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make the renewal process easier.

(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 the renewal process easier for applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2500 individuals are licensed by the Board. Approximately schools are certified as being in good standing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will fill out the new form instead of the old form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost. They already pay a renewal fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The process will be easier to understand through the utilization of the updated form.

(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 Licensure for Massage Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(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 Licensure for Massage Therapy
(Amendment)

201 KAR 42:070. Endorsement.

RELATES TO: KRS 309.358, 309.359

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.359 authorizes the board to issue a license to a person holding a credential in another state of the United States. KRS 309.355(3) requires the board to promulgate administrative regulations to im-

plement KRS 309.350 through 309.364. This administrative regulation establishes the application process for issuance of a license to a person holding a credential in another state of the United States.

Section 1. An applicant Meeting Equal or Higher Standards. An applicant holding a license issued by another state with licensure standards equal to or higher than the requirements of KRS 309.358 shall submit:

(1) A completed Application for Licensure as a Massage Therapist, which is incorporated by reference in 201 KAR 42:035;[~~(2) To the current credentialing body, the Application for Licensure Via Endorsement.~~

~~(a) The applicant shall request that the current credentialing body complete the Application for Licensure Via Endorsement verifying the applicant's current licensure, registration, or certification.~~

~~(b) The Kentucky Board of Licensure for Massage Therapy shall accept as verification the Application for Licensure Via Endorsement if the form is complete and submitted directly from the current credentialing body;~~]

(2)[~~(3)~~] A verifiable statement that the individual is in good standing as a massage therapist from the credentialing authority of the jurisdiction in which the applicant holds a license or credential including duration of the license or credential; and

(3)[~~(4)~~] The appropriate fee for licensure as required by 201 KAR 42:020, Section 2(1).

Section 2. An Applicant Meeting Lesser Standards. An applicant who is credentialed as a massage therapist in another state with less stringent requirements than KRS 309.358 shall submit:

(1) A completed Application for Licensure as a Massage Therapist, which is incorporated by reference in 201 KAR 42:035;[~~(2) To the current credentialing body, the Application for Licensure Via Endorsement.~~

~~(a) The applicant shall request that the current credentialing body complete the Application for Licensure Via Endorsement verifying the applicant's current licensure, registration, or certification.~~

~~(b) The Kentucky Board of Licensure for Massage Therapy shall accept as verification the Application for Licensure Via Endorsement if the form is complete and submitted directly from the current credentialing body;~~]

(2)[~~(3)~~] A certified statement that the individual is in good standing as a massage therapist from the credentialing authority of the jurisdiction in which the applicant holds a license or credential including duration of the license or credential;

(3)[~~(4)~~] The appropriate fee for licensure as required by 201 KAR 42:020, Section 2(1); and

(4)[~~(5)~~] Documents evidencing the applicant's combined initial training, professional experience, continuing education, or other credentials constituting equivalency to KRS 309.358. Acceptable documentation may include:

(a) Passage of the National Certification Board of Therapeutic Massage and Bodywork's National Certification Exam (NCE) or an examination that has been approved by the board;

(b) Certified school transcripts received directly from the massage school;

(c) Copies of continuing education certificates from studies completed after or not included as part of the initial training;

(d) Certified transcript of health care related academic course work;

(e) Proof of teaching massage therapy relevant curriculum as stated in KRS 309.363;

(f) Other credentials that may constitute equivalence to the standards in KRS 309.358, which may also include research, clinical internships, publications, and massage therapy leadership positions; or

(g) Current proof of hands-on therapeutic massage or bodywork sessions. Supporting documentation for the hours or years of massage therapy work, including appointment books, employer verification, log books, or appointment books for self employed individuals. If this is the only documentation to establish equivalency, a minimum of four (4) years' experience shall be required.[~~Section 4. Incorporation by Reference. (1) "Application for Licensure Via Endorsement", January 2011, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

CHERYL TURNER, Board Chair

APPROVED BY AGENCY: November 1, 2012

FILED WITH LRC: November 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 January 2, 2013 at the close of business. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Carolyn Benedict, Board Administrator, Board of Licensure for Massage Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296.

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 processes for applying for licensure via endorsement.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 309.359.

(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 requirements for licensure by endorsement.

(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 eliminates an unnecessary form.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that licensure by endorsement is an easily understood process.

(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 the process of the Board more easily understandable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2500 individuals are licensed by the Board. Approximately schools are certified as being in good standing.

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

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

regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None; the process will be easier for new licensees.

(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 Licensure for Massage Therapy.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(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 Licensure for Massage Therapy
(Amendment)

201 KAR 42:080. Programs of massage therapy instruction.

RELATES TO: KRS 309.352(2), 309.355(3), 309.358(4), and 309.363(1)

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.352(2) requires the board to define licensed health-care professionals for the supervision of massage therapy students in clinical settings. KRS 309.355(3) requires the board to promulgate administrative regulations on standards of massage therapy educational program curriculum and instructor qualifications. KRS 309.358(4) requires the board to approve massage therapy training programs. KRS 309.363 requires board approval of massage therapy programs of instruction and establishes instructor qualifications. This administrative regulation establishes the definitions of supervision and qualifying supervisors and establishes the process for issuing and renewing the Certificate of Good Standing to a program of massage therapy education.

Section 1. Definitions. (1) "Adjunctive course" means a course in a program of education that enhances the career of a massage therapist but is not massage theory, technique, or practice.

(2) "Clinic" or "clinical" means a setting in which students are provided with on-site supervision and training in the practice of massage therapy.

(3) "Clinical coordinator" means the instructor of a massage therapy course in which students are assigned to perform massage therapy sessions on non-students, on or off-campus, and who is responsible for assigning the student to an appropriate clinical setting, supervision of student performance through regular consultation with the student and evaluating student achievement of clinical course objectives.

(4) "Externship" means a course offered by an approved program that:

(a) Has a syllabus that describes objectives and evaluations; and

(b) Is over and above the 600 supervised curriculum hours required for licensure.

(5) "Other licensed healthcare professional" means a practitioner as established in KRS 309.352(9)(a) through (c), (e), and (f) who may supervise a massage therapy student in a business.

(6) "Supervision" means the process of verifying attendance, assigning work, consulting with the student, evaluating student performance, and being available for emergency assistance.

Section 2. A program applying for a Certificate of Good Standing for a Massage Therapy Training Program shall file a completed, signed, and dated application and required documentation with the board, meeting the requirements set forth in KRS 309.363(1), (a), (b), and (c). Documentation shall include:

(1) A copy of the current license to operate issued by the Kentucky State Board for Proprietary Education, the Council on Postsecondary Education, or their equivalent in the state in which the school is conducting classes.

(2) A curriculum statement as described in KRS 309.363(1)(b)1, 2, 3, 4, and 5 showing clock hours for each of the required subjects.

(3) A listing of instructional staff and their qualifications, including:

(a) Documentation of current licensure of massage instructors; and

(b) Resume, CV or PE-11 form for all instructors showing the specific qualifications for teaching an adjunctive or science course.

(4) A description of the policies and procedures in place for collecting and analyzing data about the quality and effectiveness of educational programs including student progress, completion, and licensure.

(5) A copy of the program or school catalogue.

(6) Documentation of accreditations held by the program or school offering the program.

(7) A copy of a student contract agreeing not to accept compensation for massage therapy services provided prior to licensure by the board.

(8) A statement with supporting documentation showing proof that at least seventy (70) percent graduates of the program who have taken the MBLEx and NCBTMB Exam over the twelve (12) months prior to application have received a passing score. Failure to supply proof of meeting this standard shall be grounds for denial of a program's request for certification of good standing.

Section 3. A Certificate of Good Standing may be renewed upon:

(1) Submission of the Application for Renewal of a Certificate

of Good Standing for a Massage Therapy Training Program form with the information required by this administrative regulation to the board on or before the anniversary date of issue of certificate;

(2) Current complete name, address, email address, Web site, and telephone number of each location in which the massage therapy training program is provided;

(3) Current listing of instructional staff and their qualifications, with attached documentation of qualifications of new instructors;

(4) A current curriculum statement as described in KRS 309.363(1)(b)1, 2, 3, 4, and 5;

(5) A curriculum statement for new programs of massage therapy added to the school's original offering, such as an Associates Degree Program, if the new program may be used to meet initial qualifications for licensure;

(6) A statement with supporting statistics to show student completion, examination pass rates, licensure rates, and placement rates; and

(7) Documentation of accreditation reviews and renewals, if held.

(8) A statement with supporting documentation showing proof that at least seventy (70) percent graduates of the program who have taken the MBLEx and NCBTMB Exam over the twelve (12) months prior to application have received a passing score. Failure to supply proof of meeting this standard shall be grounds for denial of a program's request for certification of good standing.

Section 4. Externships and Clinicals. (1) A student completing an externship or clinical experience shall not receive compensation.

(2) Massage schools or businesses that provide any type of student massage shall conspicuously include the respective words "student massage" in all promotional materials, and shall conspicuously display a written notice in the waiting room or treatment area that services are being provided by a student.

(3) Clinical courses awarding credit hours toward the 600 hours required for licensure shall be supervised by a licensed massage therapist with three (3) years of experience and available for on-site consultation.

(a) Massage sessions offered as part of a student clinic shall be evaluated by the instructor, and appropriate goals for improvement in areas such as customer service, technique, body mechanics, and draping shall be set according to the needs of the student.

(b) Student massage clinics shall be supervised by a massage therapy instructor in the clinic.

(c) Student clinic client records shall be maintained at the school and shall meet the Standards for Documentation established In 201 KAR 42:060, Sections 3 and 2(4), and record of payment shall be made available to the client upon request.

(4) The instructor of the externship course shall provide:

(a) Clear, written learning objectives to students and their site supervisors;

(b) Planned opportunities to discuss the externship experience at regular intervals with the student, and with the site supervisor; and

(c) A mechanism for evaluating student performance in the externship experience, presented to the student and the site supervisor at the beginning of the course.

(5) A program offering an externship course shall have a written agreement signed by the institution or program director and the externship site personnel that clearly defines the responsibilities of the onsite supervisor, the clinical coordinator and the student. An externship course shall be limited to no more than twenty (20) percent of the total program hours. The externship course if offered, shall be completed after the primary 600 supervised curriculum hours required by KRS 309.363(1)(b).

(6) A program offering an externship course shall have liability insurance to cover student activities within the course.

(7) Externship sites shall have a licensed massage therapist or other licensed healthcare professional onsite to be available for emergencies or consultation.

(a) Externs may accrue hours for reception, documentation, business-related activities other than hands-on massage services while the site supervisor is off-premises.

(b) A student session at an externship site may occur with the site supervisor available by phone if the client of such session is on staff of the externship site or another extern, and a member of the professional staff is on premises for emergency assistance.

(8) Externship client records shall be maintained at the externship site and shall meet the Standards for Documentation established in 201 KAR 42:060, Sections 3 and 2(4), and record of payment shall be available to client upon request.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for a Certificate of Good Standing for a Massage Therapy Training Program", October 2012[~~September 2010~~]; and

(b) "Application for Renewal of a Certificate of Good Standing for a Massage Therapy Training Program", October 2012[~~September 2010~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3296, Monday through Friday, 8 a.m. to 5 p.m.

CHERYL TURNER, Board Chair

APPROVED BY AGENCY: September 29, 2012

FILED WITH LRC: November 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 January 2, 2013 at the close of business. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Carolyn Benedict, Board Administrator, Board of Licensure for Massage Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296.

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 requirements for schools seeking to have their massage therapy program certified with the Board.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 309.355(3).

(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 requirements for massage therapy education programs.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes requirements for exam performance by schools that have a massage program.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that schools that have massage programs are performing effectively.

(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 re-

quirements.

(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 2500 individuals are licensed by the Board. Approximately schools are certified as being in good standing.

(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: Schools will need to submit more information related to student performance in order to stay in good standing.

(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 and will be related to data collection.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The certification obtained will denote a heightened level of performance.

(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 Licensure for Massage Therapy.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(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:

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(Amendment)

202 KAR 7:520. Allocation of block grant funding assistance for emergency medical services.

RELATES TO: KRS 311A.010, 311A.030(2), 311A.055, 311A.060, 311A.155(3)

STATUTORY AUTHORITY: KRS 311A.155

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.155 authorizes the Kentucky Board of Emergency Medical Services to promulgate administrative regulations concerning the receiving and disposing of grant funds. KRS 311A.155 authorizes the Kentucky Board of Emergency Medical Services to maintain a block grant fund program for the purpose of assisting units of local government in the provision of emergency medical services. This administrative regulation establishes standards and criteria governing the allocation of funding assistance to eligible applicants.

Section 1. Eligibility to Receive EMS Grant Funding. (1) A county in the Commonwealth of Kentucky shall be eligible to apply for and may receive emergency medical services (EMS) grant funding if the applicant county meets the requirements in this administrative regulation.

(2) A merged government shall not lose eligibility pursuant to this administrative regulation and may apply for and receive EMS grant funding if the applicant meets all requirements of this administrative regulation.

(3) Nothing in this administrative regulation shall be construed to grant an agency licensed pursuant to 202 KAR 7:501 the authority to apply for or receive EMS grant funding independent of the county.

(4) A county or merged government that applies for EMS grant funding shall maintain within its boundaries and for the benefit of its inhabitants, one (1) or more agencies that provide primary EMS 911 response and transport service.

(5) A county or merged government shall be considered to maintain EMS 911 level of service by:

(a) Holding the license for and operating a county-owned Class I Ground Ambulance service;

(b) Holding the license for a Class I Ground Ambulance service but contracting with a licensed service to operate within the county;

(c) Allowing an agency or multiple agencies to operate within the county to provide EMS 911 level of service for the benefit of the inhabitants of that area; or

(d) Not holding the license for, but bearing the responsibility of, operating or allowing the operation of, an agency or multiple agencies within the county to provide EMS 911 level of service for the benefit of the inhabitants of that area.

(6) A county or merged government shall be eligible to receive EMS grant funding only for agencies licensed as Class I. Other classes of service shall not be eligible.

(7) A county or merged government shall not disperse funds to a licensed agency that cannot provide evidence of compliance with KBEMS' data collection requirements pursuant to KRS 311A.190 and 202 KAR 7:530.

(8) An agency that is not compliant with data collection requirements in KRS 311A.190 and 202 KAR 7:530 may submit a plan of correction for approval by the executive director. A plan shall include at least:

(a) A detailed outline of measures that shall be taken to achieve compliance;

(b) Proof of equipment necessary to achieve compliance;

(c) Deadlines that shall be met in achieving compliance that shall not extend beyond two (2) years from the approval of the plan of correction; and

(d) A stipulation that an agreed percentage of awarded grant funds shall be used in taking measures that shall achieve compli-

ance with data collection requirements in KRS 311A.190 and 202 KAR 7:530.

(9) An agency that is following an approved plan of correction for data collection compliance pursuant to KRS 311A.190 and 202 KAR 7:530 may be eligible to obtain block grant funds from an applicant county or merged government.

(10) An agency undergoing disciplinary action pursuant to KRS 311A.060 shall be eligible to receive funds if in compliance with board-recommended disciplinary action.

Section 2. Eligibility for Authorized Expenditures. (1) A county or merged government eligible to receive EMS grant funding shall be authorized to spend funds based upon a tiered level of compliance with these administrative regulations.

(2) An eligible county or merged government shall meet the requirements for one (1) of the following tiers:

(a) A Tier I applicant shall be an agency that maintains a primary EMS 911 ground ambulance service that is substantially compliant with 202 KAR 7:501 but has documented violations requiring on-going plans of correction that are addressed and may be eliminated by the award of EMS grant funds;

(b) A Tier II applicant shall be an agency that maintains a primary EMS 911 ground ambulance service that has operated free of documented violations requiring on going plans of correction for one (1) inspection cycle;

(c) A Tier III applicant shall be an agency that maintains a primary EMS 911 ground ambulance service that has operated free of violations for two (2) or more inspection cycles; and

(d) A Tier IV applicant shall consist of a group of Tier III applicants eligible to combine EMS grant funds for the common good of their primary EMS 911 ground ambulance services.

(3) A county or merged government may request reconsideration of the tier into which the county or merged government has been placed, and each request shall be acted upon within forty five (45) days of the office's receipt of the request for reconsideration the time limits established in this administrative regulation.

(4)(a) If the office of the board denies changing an applicant's tier, the applicant may appeal the decision to the board.

(b) The board's decision after appeal shall be final.

Section 3. Application Requirements. (1) An applicant for EMS grant funds shall fully complete all portions of the County Application, KBEMS G-1, 1/2013 and the Agency Application, KBEMS-G2, 1/2013.

(2) Each application shall be received by January 31 of each year. An applicant shall not receive EMS grant funds if the application is not filed on or before this deadline.

(3) Each application shall include an itemized list of items intended to be purchased with EMS grant funds and a narrative justification for the purchase of those items. An application that does not include the itemized list or the narrative justification shall be returned by the board office and shall not be timely filed if the application does not resubmit the revised application by the filing deadline established in subsection (2) of this section.

(4) Each applicant shall identify on the application which agency or agencies will receive the EMS grant funds sought in the application process.

(5) If the applicant intends for more than one (1) agency to receive funds, the applicant shall specifically identify every agency to which funds shall be dispersed.

(6) The service director or ambulance board chair of an agency receiving funds from an applicant shall certify that the agency:

(a) Is a licensed Class I ground ambulance service in the state of Kentucky;

(b) Acknowledges, understands, and agrees to comply with the requirements and duties of KRS 311A.155 and this administrative regulation;

(c) Has not made false statement or misrepresentations on the application and that falsely certifying shall subject the agency to reimbursement of funds to KBEMS and sanctions pursuant to KRS 311A.060; and

(d) Shall not misuse funds and that doing so shall require the agency to reimburse those funds to KBEMS and shall subject the agency to sanctions pursuant to KRS 311A.060.

(7) An applicant county or merged government shall submit the County Application, KBEMS G-1 1/2013 with the County Judge Executive's signature or an agent duly authorized by the applicant. Duly authorized agents may include chief administrative officers for the applicant, but shall not include a person unable to legally bind the applicant.

(8) An applicant shall certify on the application that the county or merged government:

(a) Acknowledges, understands, and agrees to comply with the requirements and duties of KRS 311A.155 and this administrative regulation;

(b) Has not made false statement or misrepresentations on the application and that falsely certifying shall subject the applicant to reimbursement of funds to KBEMS and sanctions pursuant to KRS 311A.060;

(c) The applicant shall not misuse funds and that doing so shall subject the applicant to reimbursement of those funds to KBEMS and sanctions pursuant to KRS 311A.155(5) and 311A.050; and

(d) The applicant shall be jointly responsible for ensuring all purchases and expenditures of block grant funds are authorized and allowable pursuant to KRS 311A.155 and this administrative regulation.

(9) An application for block grant funds that designates for receipt of funds an agency that is currently undergoing or is the subject of proposed sanctions pursuant to KRS Chapter 311A shall be voted on by the board for approval or disapproval.

Section 4. Application for Change of Items. (1) An applicant wishing to spend awarded funds on items not approved in the agency application, shall submit the "Substitute Item Form" KBEMS-G3, 1/2013 to remove the approved items and substitute different items for purchase.

(2) A substituted item purchased without notification to and approval from KBEMS shall be misuse of grant funds and shall subject the applicant to sanctions pursuant to KRS 311A.060.

(3) Authorization for substitute items shall not be approved retroactively. An approval for a substitution shall be sought prior to purchase.

(4) The application for approval of substituted or additional items shall be made on the "Substitute Item Form" KBEMS G-3, 1/2013.

(5) The application for approval shall contain signatures of the agency to which the funds were dispersed as well as the applicant's authorized agent.

Section 5. Funds Management. (1) Upon award of block grant funds, the applicant, the receiving agencies, and KBEMS shall execute a "Grant Agreement" that outlines the relevant statutory and regulatory requirements, duties, and obligations of all parties.

(2) Every "Grant Agreement" shall bear the signatures of the applicant's authorized agent, the service director or ambulance board chair of each agency receiving the funds from the applicant, and the executive director of KBEMS.

(3) Funds shall not be dispersed until the "Grant Agreement" is signed and dated by the parties required in this section of this administrative regulation.

(4) The "Grant Agreement" shall require that the applicant and the receiving agency authorize KBEMS to conduct an audit of records relevant to use of the awarded funds.

Section 6. Allowable Expenditures. (1) Awarded funds shall only be spent on authorized purchases.

(2) Authorized purchases shall be determined by the Tier for which the receiving agencies are eligible.

(3) Authorized purchases for the Tiers are as follows:

(a) Tier I services shall be authorized to spend awarded funds on items, equipment, and training for personnel only if those purchases are necessary for the agencies to meet the minimum requirements of 202 KAR 7:501;

(b) Tier II services may purchase any items, equipment, or training for personnel that fall under Tier I. In addition, Tier II eligible services may purchase pre-approved educational tools and items.

(c) Tier III services may purchase an item from Tier I or II, plus

outside EMS related class registrations, items appearing on the Federal Emergency Management Agency Approved Equipment List, and additional items if applied for and approved by the board based on current applicability to EMS standards of medical practice and promotion of public health and safety; or

(d) Tier IV services may organize as a "Cooperative of Agencies" consisting of services that qualify for Tier III. "Cooperative Agencies" shall be allowed to pool awarded funds for the purchase of items beneficial to multiple counties within the cooperative.

(4) When seeking reimbursement for the conduct of authorized educational courses, only expenses directly related to courses or training shall be authorized. Block grant funds shall not be used for reimbursement of participants' travel, food, gas, lodging, or incidental expenses related to EMS classes.

Section 7. Cooperative of Agencies. (1) A Cooperative of Agencies shall consist of a minimum of two (2) agencies.

(2) Each agency within a cooperative shall have on file current mutual aid agreements that existed prior to and extend past the current grant award period. An agency that does not have a current and ongoing relationship shall not be allowed to enter into a cooperative agreement.

(3) Items or equipment purchased with the grant funds awarded to an agency within a cooperative shall benefit each member agency of that cooperative.

(4) Each applicant shall agree that the agencies to which they disperse money may enter into the "Cooperative of Agencies" for the benefit of the inhabitants within the county or area of the merged government.

(5) Each agency included in a "Cooperative of Agencies" shall enter into and submit to KBEMS a cooperative agreement approved by the board that includes, at a minimum:

(a) Where ownership of the equipment will reside;

(b) Who shall maintain and repair the equipment;

(c) Certification that all Parties to the "Cooperative of Agencies" shall have access to the equipment;

(d) An agreed and approved protocol for the possession, access, use, and replenishment of items or equipment obtained with grant funds;

(e) A narrative justification for the purchase of the equipment;

(f) A process for discarding the equipment if it becomes obsolete;

(g) An agreed statement of liability distribution; and

(h) The signatures and certifications of truthfulness of each party to the "Cooperative of Agencies," the applicant counties or merged governments, and the Chair of KBEMS.

(6) In addition to the agency application, representatives of the "Cooperative of Agencies" and the applicant counties or merged governments shall appear at a regular meeting of the board to present an explanation of and justification for the use of combined funds.

(7) Tier IV Cooperatives shall not be authorized without affirmative vote of the board.

Section 8. Accountability. (1) Each applicant that receives funds and each agency to which the applicants disperse funds shall be jointly accountable for use of the money.

(2) Each applicant and agency shall submit a grant accountability of funds form (KBEMS-G4) that includes at a minimum:

(a) Itemization of all purchases;

(b) Attached receipts for all purchases; and

(c) Included packing slips or invoices.

(3) If an applicant or agency maintains carry-over funds in accordance with KRS 311A.155(5), the applicant or agency shall submit proof of the continued availability of those funds. Proof may include a bank statement, a letter from the designated county or government official, a budgetary line-item, or other evidence sufficient to account for the unused, carry-over funds.

(4) Failure to submit documents accounting for grant funds by the deadline established in Section 9 of this administrative regulation may make the applicant or agency ineligible for further award of block grant funds.

(5) The board may request documentation of purchases and expenditures at any time during the grant cycle. Failure to comply with this request shall make an applicant or agency ineligible for further award of grant funds.

(6) An agency that fails to comply shall also be subject to discipline pursuant to KRS 311A.060.

Section 9. Time Limits and Deadlines for Block Grant Funds Awards. (1) Agency application for block grant funds shall be postmarked or received by January 31 of each year.

(2) Accounting required pursuant to Section 8 of this administrative regulation shall be postmarked or received by March 15 of each calendar year.

(3) The office of the board shall supply notification to the applicants and agencies of their grant award no later than April 30 of each calendar year.

(4) The office of the board shall make payment of grant funds to applicants no later than August 31 of each calendar year.

Section 10. Review of Grant Applications. (1) A grant application shall be subject to review by the office of the board and other entities relevant to the award process.

(2) Review of applications shall include:

(a) Level One Review, which shall determine completeness of the application. An incomplete application shall be rejected, and if still within the deadline for application, the incomplete areas may be cured and resubmitted. If outside the application deadline, resubmission shall not be accepted;

(b) Level Two Review, which shall determine regulatory compliance and appropriateness of expenditures.

(3) Approval authority for grant applications and purchase authorization shall be the:

(a) Executive director for Tier I and II applicants;

(b) Executive director for Tier III applicants who request purchases or expenditures at the Tier I or II level;

(c) Board for Tier III applicants with request for purchases or expenditures at the Tier III level; and

(d) Board for Tier III applicants that fall within the Tier IV "Cooperative of Agencies" level.

(4) All Tier I or II purchases shall be consistent with 202 KAR 7:520 Section 6(3)(c) and approved prior to purchase. Exemption from or waiver of pre-approval shall not be permitted.

(5) Tier III and IV applications and purchase authorizations may be recommended for:

(a) Full approval;

(b) Approval with modifications; or

(c) Denial.

(6) Tier III and IV applicants may request reconsideration of approval with modifications by submitting new evidence of justification for their request at the next regular board meeting or at a specially called meeting.

(7) Tier III and IV applicants may request reconsideration of denial by submitting new evidence of justification for their request at the next regular board meeting or at a specially called meeting.

(8) New proposals, if applicable, shall be considered during a request for reconsideration.

(9) A second denial of a Tier III or IV application or authorization for purchases shall be final and shall result in a default to Tier I or II purchases or expenditures that shall meet all requirements of this administrative regulation.

Section 11. Grant Program Management. (1) Implementation and management of the grant program may include employment of an individual with primary responsibility of managing the block grant fund program.

(2) Other responsibilities shall include:

(a) Research of and application for additional EMS grant sources and funding streams that benefit KBEMS' regulatory obligations to licensed and certified agencies; and

(b) Assistance to licensed EMS agencies in their efforts to locate and obtain other EMS grants.

(3) Employment of the grant management employee shall be dependent upon the availability of budgetary funds.

Section 12. Statewide Initiatives. (1) The board shall reserve a portion of the block grant funds appropriated to it by the legislature if a unanimous vote of the board determines:

(a) That a statewide initiative is necessary to further one (1) or more of the statutory functions of the board in KRS 311A.035; or

(b) A portion of the funds shall be distributed to assist agencies in meeting a federal or state mandate relevant to EMS.

(2) KBEMS shall not reserve funds for statewide initiatives in consecutive years.

(3) Notification of reservation of funds shall be sent to all eligible applicants and agencies by September 1 of the calendar year prior to the grant cycle.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "County Application, Kentucky Ambulance Grant", KBEMS-G1, 1/2013;

(b) "Agency Application, Kentucky Ambulance Grant", KBEMS-G2, 1/2013;

(b) "Ambulance Grant Substitute Item Form", KBEMS-G3, 1/2013;

(c) "Grant Accountability of Funds", KBEMS-G4, 1/2013; and

(d) "The Federal Emergency Management Agency" Approved Equipment List, Code of Federal Regulations Section 2 C.F.R. 215-225.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at 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.[~~Application for Funding Assistance. (1) An applicant may apply to the board for funding assistance for the purchase of a vehicle or equipment in accordance with KRS 311A.155.~~

~~(2) An application shall be made on a Block Grant Funding Application, incorporated by reference.~~

~~(3) An entity is eligible to apply for funding if the entity is:~~

~~(a) Licensed as a Class I ground ambulance service; and~~

~~(b) Not subject to pending or proposed disciplinary action by the board in the current fiscal year.~~

~~(4) An applicant who has been awarded a grant shall execute a memorandum of agreement with the board.~~

~~Section 2. Allocation of Funds. (1) Funds may be expended for the purchase or lease of one or more of the following:~~

~~(a) A new or used vehicle that meets the requirements of 202 KAR 7:580, 202 KAR 7:582, and 202 KAR 7:584, if the provider demonstrates the need for a replacement vehicle because an existing vehicle:~~

~~1. Is totally inoperable; or~~

~~2. Is at least five (5) years old and:~~

~~a. Has been driven in excess of 70,000 miles, if it has a gasoline engine and is in poor condition; or~~

~~b. Has been driven in excess of 100,000 miles, if it has a diesel engine and is in poor condition;~~

~~(b) A monitor/defibrillator or automatic external defibrillator;~~

~~(c) An ambulance cot or stretcher costing more than $250 per unit;~~

~~(d) An item of nondisposable equipment required by administrative regulation for a ground ambulance service, that exceeds $250 per unit; or~~

~~(e) A training mannequin or dysrhythmia generator that exceeds $250 per unit.~~

~~(2) A vehicle purchased with grant funds shall not:~~

~~(a) Be more than three (3) model years older than the most current model year vehicle; and~~

~~(b) Have an odometer reading in excess of 40,000 miles.~~

~~(3) Grant funds may be used for personnel training, education, and related expenses.~~

~~Section 3. Verification of Expenditures. (1) The applicant shall provide documentation on an annual basis, or more frequently, as requested by a representative of the board, to verify that grant funds have been expended:~~

~~(a) As stipulated by the memorandum of agreement allocating the block grant funds; and~~

~~(b) Within the designated time frame.~~

~~(2) The board shall not approve or provide additional funding until the applicant provides documentation required in satisfaction of subsection (1) of this section.~~

~~Section 4. Title, Use, and Disposition of Vehicles and Equipment. (1) Legal title to a vehicle or equipment purchased pursuant to this administrative regulation shall vest in the applicant and not in any organization contracting with the applicant.~~

~~(2) The applicant shall maintain a record for each vehicle and item of equipment purchased with EMS block grant funds.~~

~~(3) An applicant shall not dispose of a vehicle or item of equipment purchased with EMS block grant funds within three (3) years of the date of purchase, unless the applicant seeks, and the board provides, prior written approval to dispose of the item.~~

~~Section 5. Fund Management and Scheduling - Block grant funds. (1) An application for consideration shall be postmarked by December 31. Failure to meet the postmark deadline shall render the applicant ineligible for that funding cycle.~~

~~(2) If funds are available from the Commonwealth, the board shall notify the grantees by March 1.~~

~~Section 6. Emergency Funding of Vehicles and Equipment. (1) A request for emergency funding of a vehicle, equipment, or both, may be made to the board at any time using the Application for Emergency Funding, incorporated by reference.~~

~~(2) The board shall award emergency grant funds based upon:~~

~~(a) Review of the application; and~~

~~(b) Availability of funds.~~

~~Section 7. Discretion of the Board. (1) The board may reduce, but not increase, the amount of funding requested by an applicant.~~

~~(2) Except as provided by Section 6 of this administrative regulation, the awarding, reduction, or denial of a grant application under KRS 311.155 and this administrative regulation is within the sole discretion of the board.~~

~~Section 8. Incorporation by Reference. (1) The following forms are incorporated by reference:~~

~~(a) Block Grant Funding Application (2002); and~~

~~(b) Application for Emergency Funding (2002).~~

~~(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, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

This is to certify that the Executive Director of 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).

MIKE POYNTER, Executive Director

APPROVED BY AGENCY: November 13, 2012

FILED WITH LRC: November 14, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2012 at 10:00 a.m. Eastern Time at the Kentucky Community and Technical College System, 300 North Main Street, Versailles, Kentucky 40383. Individuals interested in being heard at this hearing shall notify the Kentucky Board of Emergency Medical Services in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2013. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Pamela Duncan

(1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:520 establishes the requirements for the Emergency Services Block grant funds Program. The regulation sets the conditions for eligibility and the authorized expenditures.

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 311A.155 which creates the program for distribution of state grant funds to fiscal courts and the EMS agencies that operate for emergency response in the counties involved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 311A.155 which establishes a grant fund for the promotion and assistance of EMS in Kentucky and creates a partnership between county governments and the ambulance services that operate for 911 calls within the county's geographic area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.155 requires the Kentucky Board of EMS to set eligibility requirements for the legislatively approved block grant funds. Additionally, the statute requires a management and oversight plan for those funds. This regulation assists the Board by ensuring a consistent mechanism for application, review, and oversight exists in dispersing and using public funds.

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

(a) How the amendment will change this existing administrative regulation: The current amendment is a revision that is necessary due to the long lapse in intervening revisions. Because this regulation has not been amended in years, the eligibility requirements for services and the types and costs of equipment have drastically changed. This regulation attempts to create a more current mechanism for managing the grant program.

(b) The necessity of the amendment to this administrative regulation: Without this amendment, the current regulation will continue to restrict the appropriate expenditure of monies earmarked by the legislature for assistance to counties in obtaining the most responsive and highest quality EMS care possible.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute – KRS 311A – grants power to KBEMS to administer the block grant funds distributed to KBEMS for award to county ambulance services in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: 202 KAR 7:520 provides the foundation for a block grant program that will carefully and more thoughtfully administer public funds in order to bolster EMS in Kentucky, particularly in rural areas where EMS can often lack the resources necessary to provide patient care.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

(a) All ground ambulance services in Kentucky who are licensed to provide Class I emergency care to individuals within their geographic service area;

(b) EMS personnel who will benefit from the use of funds to further their EMS education and training;

(c) County and City Governments who fund EMS within their governmental boundaries; and

(d) All residents and citizens who receive EMS in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: EMS Personnel, EMS Ambulance Providers, and County and City Governments will all benefit from the amended regulation because it will update and expand the types of expenditures authorized and will allow for cooperative use of funds.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities – services, county and city governments, and personnel – shall meet applicable block grant requirements, including the need to follow application procedures, follow through with approval requirements, provide accounting of funds expended, and all other requirements necessary to obtain and appropriately use public funds provided pursuant to the block grant for EMS.

(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 compliance will be no greater than it has been under the previous version of the regulation. The cost is simply whatever resources are used to apply for and manage the grant funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit because the regulation provides a much clearer and more organized management mechanism for the block grant funds. Additionally, counties and their citizens will benefit because the EMS agencies in their areas that provide services will be better equipped due to the expanded range of approved expenditures.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: KBEMS will not incur any additional costs. However, the time that already employed staff members spend managing the new system may increase because the new requirements need closer review and have a potentially more detailed approval process.

(a) Initially: The above paragraph is accurate for initial costs.

(b) On a continuing basis: The continuing costs may decline as the system becomes more streamlined and most applications become electronically submitted.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBEMS is a state agency that receives its annual budget from the state government as well as the block grant funds that originated with SB 66.

(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 funds will be necessary. The program already exists and there is <u>not</u> currently, nor will there be in the future, any fee associated with the application for and approval of the block grant funds.

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

(9) TIERING: Is tiering applied? Tiering was not used as this block grant is specific to EMS in Kentucky and cannot be approved for or spent on entities that are not eligible.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The regulation will relate to any County or City owned ambulance service or any ambulance service operated on behalf of a City or County but only if those services are licensed as Class I agencies, which means that they respond to E-911 calls within their designated area.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.010, 311A.030(2), 311A.055, 311A.060, 311A.155(3), and KRS 311A.155. No federal statutes necessitate this amendment.

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) The grant program is already in place, and the sums available will continue to be available to parties who meet the requirements and fulfill all statutory and regulatory obligations in the first year.

(b) The regulation will continue to supply revenue to the state or local government entities eligible for the block grant funds and could increase the amount that they are entitled to receive in subsequent years.

(c) In the first year, because this grant program is already in place with relatively little burden placed on the counties or merged governments involved, this administrative regulation will not impose any new need for expenditures or revenue outlay by the gov-

ernmental entities involved.

(d) In subsequent years, the amendment will not cost any revenues above and beyond what is currently being expended to administer the block grant 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:

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

301 KAR 2:142. Spring wild turkey hunting.

RELATES TO: KRS 150.175(7), (8), (15), (17), (18), 150.305, [150.360,]150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.390(1) prohibits a person from taking, pursuing, or molesting a wild turkey in any manner contrary to the provisions of Chapter 150 or its regulations[~~authorizes the department to establish restrictions on hunting wild turkey~~]. This administrative regulation establishes season dates, shooting hours, and other requirements for spring turkey hunting.

Section 1. Definitions. (1) "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.

(2) "Youth" means a person under the age of sixteen (16) by the day of the hunt.

Section 2. Youth Turkey Season. There shall be a statewide youth-only turkey hunting season for two (2) consecutive days beginning on the first Saturday in April.

Section 3. Statewide Turkey Season. There shall be a statewide turkey hunting season for twenty-three (23) consecutive days beginning on the Saturday closest to April 15.

Section 4. Turkey Hunting Requirements. (1) A person shall not take more than:

(a) One (1) male turkey per day;

(b) One (1) turkey with a visible beard per day;

(c) Two (2) male turkeys per season; or

(d) Two (2) turkeys with visible beards per season.

(2) A person shall not take a turkey using any device except the following equipment[~~as~~] authorized by 301 KAR 2:140[~~, Section 5~~]:

(a) A firearm;

(b) Archery equipment; or

(c) A crossbow.

(3) A person shall only hunt turkeys from one-half[~~one-half~~] (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(4) A person who is assisting or calling a turkey for a legal hunter shall not be required to possess a hunting license or turkey permit.

Section 5. Wildlife Management Area Requirements. (1) Unless specified in this section, spring season dates and the requirements of 301 KAR 2:140 shall apply to Wildlife Management Areas.

(2) Barren River WMA. On the Peninsula Unit, including Narrows, Goose Island, and Grass Island, a person shall not use a breech-loading firearm to take a turkey.

(3) Higginson-Henry WMA. A person shall not use a firearm to take a turkey.

(4) Livingston County WMA. Statewide spring turkey season is open to youth only.

(5) Pioneer Weapons WMA. A person shall not use the following to take a turkey:

(a) A breech-loading firearm; or

(b) A scope or optical enhancement.

(6) Robinson Forest WMA. A person shall not hunt turkeys on the main block of the WMA.

(7) West Kentucky WMA. Tracts marked with the letter "A" shall be closed for the statewide turkey season established in Section 3 of this administrative regulation.[~~The area shall be open for the youth-only turkey season pursuant to Section 2 of this administrative regulation.~~]

Section 6. Special Area Requirements. (1) Unless specified in this section, all the requirements of this administrative regulation shall apply.

(2) A person shall comply with all federal requirements when hunting on the following federal areas:

(a) Bluegrass Army Depot;

(b) Fort Campbell;

(c) Fort Knox;

(d) Land Between the Lakes; and

(e) Reelfoot National Wildlife Refuge.

(3) A spring turkey season, not to exceed twenty-three (23) days, shall be allowed between the last Saturday in March and the second Sunday in May on the following areas:

(a) Bluegrass Army Depot;

(b) Fort Campbell;

(c) Fort Knox;

(d) Land Between the Lakes;

(e) Reelfoot National Wildlife Refuge; and

(f) Wendell H. Ford Regional Training Center.

(4) A turkey taken on the following areas shall be considered a bonus bird:

(a) Bluegrass Army Depot;

(b) Fort Campbell; and

(c) Fort Knox.

(5) A person shall not take more than one (1) turkey on the following areas:

(a) Land Between the Lakes; and

(b) Reelfoot National Wildlife Refuge.

(6) Otter Creek Outdoor Recreation Area. All statewide season requirements shall apply, except that shooting hours shall be from one-half (1/2) hour before sunrise to noon each day.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: November 8, 2012

FILED WITH LRC: November 13, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 January 2, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes spring wild turkey hunting seasons, bag limits, legal methods of take, and other turkey hunting requirements.

(b) The necessity of this administrative regulation: This regulation is necessary to provide adequate wild turkey hunting opportunity and to properly manage the wild turkey population 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 establishing hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.390(1) authorizes the department to establish restrictions on hunting wild turkey.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will fulfill the purposes of KRS 150.025 and 150.390 by defining the seasons, bag limits, and methods of take used to manage wild turkeys in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment will establish youth-only and statewide spring hunting seasons for wild turkeys on West Kentucky WMA.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to permit spring hunting for wild turkeys on West Kentucky WMA.

(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 is unknown how many turkey hunters will use the area during the spring season. However, there are approximately 85,000 resident and 5,500 non-resident turkey hunters in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hunters wishing to pursue turkeys on West Kentucky WMA shall abide by all license requirements and hunter restrictions as detailed in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new costs associated with the opportunity to hunt wild turkeys on West Kentucky WMA; all hunters must possess the appropriate licenses and permits required to hunt turkeys in the spring.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth hunters will be allowed to pursue turkeys during the youth-only spring season on the entire West Kentucky WMA. In addition, hunters will be allowed to pursue wild turkeys on approximately 4,500 acres of West Kentucky WMA that has been historically closed to turkey hunting during the general statewide spring season.

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

(a) Initially: There will be no additional cost to the department to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because all wild turkey hunters in Kentucky must comply with the requirements 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 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 set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. KRS 150.390(1) restricts the possession, taking, or pursuit of turkeys in any manner contrary to the provisions of Chapter 150 or its regulations.

(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 additional 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 additional revenue will be generated by this administrative regulation during subsequent years.

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

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

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

Revenues (+/-): None; see 3(a) and (b) above.

Expenditures (+/-): None; see 3(c) and (d) above.

Other Explanation:

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

301 KAR 2:185. Hunter education.

RELATES TO: KRS 150.010, 150.015, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.170

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. This administrative regulation establishes the requirements for hunter education.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years old.

(2) "Hunter education card" means a card or similar document that verifies a person has successfully completed a:

(a) Kentucky hunter education course; or

(b) Hunter education course from another state, province, or country that meets the standards established by the International Hunter Education Association.

(3) "Hunter education exemption certificate" means a certificate issued by the department that allows a person who is required to obtain a hunter education card to hunt for a period of one (1) year from the date obtained.

Section 2. Hunter Education Card. (1) Unless exempt pursuant to Section 3 of this administrative regulation or license-exempt pursuant to KRS 150.170, a person born on or after January 1, 1975 shall carry a valid hunter education card while hunting in Kentucky.

(2) A person who is less than twelve (12) years old hunting without a hunter education card shall be accompanied by an adult who is in position to take immediate control of the weapon and who:

(a) Has a hunter education card; or

(b) Is exempt from hunter education requirements.

(3) An adult shall not accompany more than two (2) hunters under twelve (12) years old at any one (1) time.

Section 3. Hunter Education Exemptions. (1) A person who is required to have a hunter education card may obtain a hunter education exemption certificate from the department.

(2) A person hunting with a valid hunter education exemption certificate shall:

(a) Carry the certificate while hunting; and

(b) Be accompanied by an adult who is in position to take immediate control of the weapon and who:

1. Is carrying a hunter education card; or

2. Was born before January 1, 1975.

(3) The department shall not issue more than one (1) hunter education exemption certificate to any individual.

Section 4. Hunter Education Course Requirements. (1) In order to obtain a Kentucky hunter education card, a person shall:

(a) Complete a hunter education course by:

1. Attending an entire department-sanctioned hunter education course; or

2. Obtaining and possessing a certificate of completion or its equivalent for course work meeting the standards of the International Hunter Education Association from:

a. An online hunter education course; or

b. A CD-ROM course or its equivalent.

(b) Correctly answer at least eighty (80) percent of the questions on a department-sanctioned exam; and

(c) Safely participate in department-sanctioned live fire exercises.

(2) A person shall be at least nine (9) years old in order to take the department-sanctioned exam.[~~authorizes the department to promulgate administrative regulations to carry out the purposes of KRS Chapter 150, including the management and conservation of wildlife. This administrative regulation establishes the requirements for hunter education instruction, to promote safe hunting, responsible wildlife management and conservation of wildlife.~~

~~Section 1. Definitions. (1) "Adult" means a person who has reached age eighteen (18).~~

~~(2) "Course completion card" means the card issued by the department, another state, province, or country to a student who has successfully completed a hunter education course which meets the standards established by the International Hunter Education Association.~~

~~(3) "Department" is defined in KRS 150.010(8).~~

~~(4) "Hunter education instructor" means a person who has been certified by the department to instruct or assist in the instruction of the Kentucky Hunter Education Program.~~

~~(5) "International Hunter Education Association" means the organization recognized as the international governing body for teaching hunter education.~~

~~Section 2. Mandatory Hunter Education Course Completion Card. (1) Except as provided in subsection (4) of this section, a hunter born on or after January 1, 1975 shall carry a valid hunter education course completion card or other proof verifying that the hunter has completed a hunter education course which meets the standards approved by the International Hunter Education Association.~~

~~(2) A bow hunter not in possession of a firearm may carry a state, province or country issued Bow Hunter Education Certificate which meets the standards approved by the International Hunter Education Association in lieu of the hunter education course completion card.~~

~~(3) A valid hunter education course completion card or a bow hunter education certificate shall be presented to a state conservation officer upon request.~~

~~(4) Exemptions.~~

~~(a) Persons under twelve (12) years of age:~~

~~1. A person under twelve (12) years of age may hunt without a course completion card, but shall be accompanied by an adult who meets the hunter education requirement and who shall be in a position to take immediate control of the bow or firearm;~~

~~2. One (1) adult who meets the hunter education requirement shall not accompany more than two (2) persons under the age of twelve (12) at one (1) time.~~

~~(b) A person exempt from a hunting license requirement is also exempt from possessing the course completion card.~~

~~(c) A person required to carry a course completion card while hunting in Kentucky shall be eligible for a temporary hunter education requirement exemption.~~

~~1. A temporary hunter education exemption shall be valid for one (1) year from the date obtained.~~

~~2. A person shall not be eligible to obtain more than one (1) exemption.~~

~~3. To validate the exemption, a person shall:~~

~~(a) Obtain a temporary hunter education exemption permit from the department for a fee;~~

~~(b) Carry the exemption form while hunting;~~

~~(c) Be accompanied by an adult who meets the hunter education requirement and who shall remain in position to take immediate control of the exempted hunter's bow or firearm while hunting.~~

~~Section 3. Hunter Education Course Requirements. A participant in the Kentucky Hunter Education Program shall be at least nine (9) years of age before being given a course completion exam and shall be eligible to receive a course completion card when he or she has:~~

~~(1) Attended department-approved instruction which meets the standards approved by the International Hunter Education Association;~~

~~(2) The workbook "Today's Hunter, A Guide to Hunting Responsibly and Safely" shall be used to teach the hunter education course and is incorporated by reference.~~

~~(3) Answered at least eighty (80) percent of the course completion examination questions correctly;~~

~~(4) Participated safely in live fire exercises as determined by a Hunter Education Instructor;~~

~~(5) Exhibited a responsible attitude toward others, property, and equipment during the course; and~~

~~(6) Provided an affidavit to the Hunter Education Instructor, if alternate means were used to complete the classroom portion of hunter education instruction. The affidavit shall verify that a participant has completed the requirement in subsection (1) of this section by department-approved video tapes, compact disk, independent study workbook, or Internet site. The affidavit shall be notarized and signed before attending the required live-fire exercises and taking the course completion examination.~~

~~Section 4. Duplicate Cards. A duplicate hunter education course completion card may be obtained from the Department of Fish and Wildlife Resources for a fee.~~

~~Section 5. Instructor Certification Requirements. (1) An applicant shall fulfill the following requirements to become certified as a hunter education instructor:~~

~~(a) Be at least eighteen (18) years of age;~~

~~(b) Complete an application;~~

~~(c) Submit to a background investigation conducted by the Kentucky State Police;~~

~~(d) Complete the basic hunter education course and possess~~

~~the hunter education course completion card;~~

~~(e) Complete a department-sponsored instructor training course; and~~

~~(f) Attain a minimum score of ninety (90) percent on the hunter education instructor examination.~~

~~(2) Basis for denial of application or revocation of certification.~~

~~(a) An applicant for certification shall be denied certification if the criminal background check required by subsection (1)(c) of this section reveals that the applicant has been:~~

~~1. Convicted of a felony;~~

~~2. Convicted of a misdemeanor relating to the health, safety, or welfare of a person; or~~

~~3. Convicted of a fish and wildlife violation or a boating violation which results in the loss of his hunting or fishing license.~~

~~(b) A person who is certified by the department shall have that certification revoked upon a finding by the commissioner that the person has been:~~

~~1. Convicted of a felony;~~

~~2. Convicted of a misdemeanor relating to the health, safety, or welfare of a person; or~~

~~3. Convicted of a fish and wildlife violation or a boating violation which results in the loss of his hunting or fishing license.~~

~~(c) A person who is convicted of a fish and wildlife violation that does not result in the loss of his hunting or fishing license may be denied certification or have his certification revoked at the discretion of the commissioner.~~

~~(d) A hunter education instructor who fails to instruct or assist in the instruction of at least one (1) hunter education course per year shall be purged from active instructor status.~~

~~(3) Appeal of decision. A person whose application for certification is denied or whose certification is revoked by the commissioner pursuant to this section may appeal that decision to the Department of Fish and Wildlife Resources Commission.~~

~~Section 6. Incorporation by Reference. (1) "Today's Hunter, A Guide to Hunting Responsibly and Safely", 2002 edition, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #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: November 8, 2012

FILED WITH LRC: November 13, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2012, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by January 2, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: ROSE Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes hunter requirements for Kentucky hunters.

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish minimum standards for responsible and safe hunting.

(c) How does this administrative regulation conform to 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 these requirements apply to a limited area.

(d) How will this administrative regulation assists or will assist in the effective administration of the statutes: This administrative regulation will assist the effective administration of the statute by providing minimum standards for hunter education, thus placing additional safety requirements relating to methods of take.

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

(a) How the amendment will change this existing administrative regulation: This amendment will remove the affidavit and notary requirement to verify alternative means for completing hunter education coursework, requires a course completion certificate in lieu of a notarized affidavit, allows hunters to take online or CD-ROM hunter education courses that qualify them to take a department-sanctioned exam and live firing exercises, and removes references to hunter education instructors, since they are all volunteers.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the regulation to provide hunters additional flexibility in obtaining required course work through online or CD-ROM alternatives. The department is reducing barriers to new hunter recruitment, but not at the expense of hunter safety.

(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: There are approximately 320,000 Kentucky hunting license holders and another 15,000 individuals who take hunter education instruction each year that will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Prospective hunters will be provided additional flexibility in obtaining hunter education certification through online course work or CD-ROM course work.

(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): Prospective hunters will be provided additional flexibility in obtaining hunter education certification through online course work or CD-ROM course work.

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

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

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

(6) What is the source of 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 a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation estab-

lished any fees directly or indirectly increased any fees: This administrative regulation does not directly or indirectly establish or increase any fees.

(9) TIERING: Is tiering applied? No, the same hunter education requirements apply to all hunters in 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 Department's Division's of Information and Education 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 these requirements apply to a limited area.

(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 increased revenue for the department during the first year.

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

(c) How much will it cost to administer this program for the first year? The cost to administer this program will not increase as a result of this amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? Subsequent year costs should also remain the same.

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 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 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 of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(2) "Light Goose" means a snow goose or Ross's goose.

(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60

(4) "Waterfowl" is defined in KRS 150.010(40).

Section 2. (1) Except as authorized by 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Season dates. (1) Duck, coot, and merganser:

(a) Beginning on Thanksgiving Day for four (4) consecutive days; and

(b) For fifty-six (56) consecutive days ending on the last Sunday in January of the following year.

(2) Canada goose:

(a) Eastern, Pennyrile, and Western Goose Zones, beginning on Thanksgiving Day and continuing until the last day in January[~~November 23 for seventy (70) consecutive days~~].

(b) Northeast Goose Zone:[~~;~~]

1. Beginning on January 1 for thirty-one (31) consecutive days.

(3) White-fronted and brant geese, beginning on Thanksgiving Day and continuing until the last day in January[~~November 23 for seventy (70) consecutive days~~].

(4) Light goose:

(a) Beginning on Thanksgiving Day and continuing until the last day in January;[~~November 23 for seventy (70) consecutive days and~~] and

(b) Light Goose Conservation Order season:

1. Western Duck Zone: from February 1 through March 31, except:

a. The season shall be closed during the first full weekend in February; and

b. Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226.

2. Eastern Duck Zone from February 1 through March 31.

(5) A person shall not hunt a light or dark goose in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. In the Ballard Zone[~~Reporting Area~~] that is established in 301 KAR 2:224:

(1) A person hunting waterfowl shall:

(a) Hunt from a blind unless hunting in flooded, standing timber;

(b) Not hunt from or establish a blind:

1. Within 100 yards of another blind; or

2. Within fifty (50) yards of a property line; and

(c) Not possess more than one (1) shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in 301 KAR 2:221, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks: The daily limit shall be six (6), that shall not include more than:

(a) Four (4) mallards;

(b) Two (2) hen mallards;

(c) Three (3) wood ducks;

(d) One (1) black duck;

(e) Two (2) redheads;

(f) Two (2) pintails;

(g) Four (4)[~~Two (2)~~] scaup;

(h) One (1) mottled duck; or

(i) One (1) canvasback.

(2) Coot: Daily limit fifteen (15).

(3) Merganser: Daily limit five (5), which shall not include more than two (2) hooded mergansers.

(4) Dark goose: Daily limit five (5)[~~six (6)~~], that shall not include more than:

(a) Two (2) Canada geese;

(b) Two (2) white-fronted geese; or

(c) One (1) brant[~~Two (2) brants~~].

(5) Light goose: Daily limit twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.

(6) The possession limit shall be double the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) 2 p.m. if hunting geese in the Northeast Goose Zone during a Canada goose season;

(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222; or

(3) One-half (1/2) hour after sunset if hunting light geese during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) Season dates:

(a) Light goose: November 5 through January 31;

(b) Light Goose Conservation Order season:

1. Western Duck Zone: from February 1 through March 31, except:

a. The season shall be closed during the first full weekend in February; and

b. Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226.

2. Remainder of state: from February 1 through March 31; and

(c) Other waterfowl: November 5 through January 31.

(2) Daily limit: three (3) waterfowl, except that there shall not be a limit on light goose during the Light Goose Conservation Order season.

(3) Possession limit: six (6) waterfowl, except that there shall not be a possession limit on light goose during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order season. (1) A person hunting light goose during the Light Goose Conservation Order season shall first obtain a free permit by completing the online application process on the department's Web site[~~website~~] at fw.ky.gov.

(2) A person hunting light goose during the Light Goose Conservation Order season shall submit a Light Goose Conservation Order report to the department by April 10.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: October 15, 2012

FILED WITH LRC: October 31, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 January 2, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2012–13 waterfowl hunting seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates and bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation manages waterfowl populations and hunting opportunity 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 the existing administrative regulation: This amendment will change the opening date of Canada, white-fronted, snow and brant goose season to be concurrent with the opening date of the first split of the regular duck season statewide except for the Northeast Goose Zone. In addition it will adjust waterfowl daily bag and possession limits to be consistent with that permitted under the federal waterfowl season frameworks under the current season structure.

(b) The necessity of the amendment to this administrative regulation: Waterfowl seasons and limits are set on an annual basis following the establishment of federal frameworks by the U.S. Fish and Wildlife Service each summer. It is the Department's responsibility to allow quality hunting opportunity within these federal frameworks.

(c) How does the amendment conform 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 that will be affected: 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 current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting seasons.

(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 an increased opportunity to hunt waterfowl in the state.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

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

(6) What is the source of 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 funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl 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's Wildlife Division and Law Enforcement Division.

(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 of taking 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 waterfowl within reasonable limits 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? This amendment will not generate revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? No new costs will be incurred in the administration of this program for the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 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 within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the 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? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The season on snow geese is shorter than the federal framework because migration patterns for this species result in a paucity of birds early in the federal framework. The Canada goose season in the Northeast Goose Zone is shorter than is permitted in the rest of the state because of the desire to maintain a huntable population in that region of the state.

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

301 KAR 2:222. Waterfowl hunting requirements on public lands.

RELATES TO: KRS 150.010(40), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 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 of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Blind" means a:

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

(2) "Department blind" means a permanently fixed blind structure built by the department.

(3) "Hunt site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) "Party" means:

(a) A person hunting alone; or

(b) Two (2) to four (4) people who share a department blind or hunt site.

(6) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(7) "Regular waterfowl season" means the open waterfowl season that does not include the Light Goose Conservation Order or the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

(8) "Waterfowl" is defined in KRS 150.010(40).

(9) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. 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 for waterfowl hunting; or

(c) Shot larger than size "T".

Section 3. (1) Except as specified in this section or in Section 4 of this administrative regulation, on a Wildlife Management Area:

(a) A person hunting waterfowl shall not:[;]

1. Establish or hunt from a permanent waterfowl blind;

2. Hunt within 200 yards of:

a. Another occupied hunt site;

b. Another legal waterfowl hunting party; or

c. An area closed to waterfowl hunting;

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a waterfowl

blind or hunt site; and

(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

(2) A person wanting to establish or use a permanent waterfowl blind or hunt site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas:

(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner; and

(c) Shall not hold more than one (1) permit per area.

(3) A person who participates in a drawing for a hunt site permit shall:

(a) Be at least eighteen (18) years of age; and

(b) Possess:

1. A valid Kentucky hunting license;

2. A Kentucky waterfowl permit; and

3. A federal duck stamp.

(4) The holder of a hunt site permit shall:

(a) Construct or establish the blind or hunt site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind; and

(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department based on weather or water level conflicts.

(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements. (1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.

(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(3) A person shall not:

(a) Hunt on an area marked by a sign as closed to hunting;

(b) Enter an area marked by signs as closed to public access; or

(c) Hunt a species on an area marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

1. The daily bag limit for ducks is greater than three (3); and

2. The daily bag limit for Canada goose is greater than or equal to two (2);

(b) At least one (1) person in a waterfowl blind shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site at Ballard or Boatwright WMA.

(5) At Ballard WMA:

(a) The duck, coot, merganser, and goose season shall be December 5 through January 27;

(b)[and merganser season shall be December 7 through January 29.

(b) The goose season shall be December 7 through January 29.

(c)] Youth waterfowl season shall be the first full weekend in February; and

(c)[. (d)] A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Day, or New Year's Day.

(d)[(e)] A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 5[6] of this administrative regulation;

2. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard Wildlife Management Area from October 15 through March 15; and

3. Exit the area by 2 p.m. during the regular waterfowl season, except as authorized by the department.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Day, or New Year's Day;

2. Obtain a daily check-in card by 8 a.m. before entering the area from December 5 through January 27;[7 through January 29.]

3. Check out the same day by:

a. Visiting the designated Check station prior to 8 a.m.; or

b. Depositing the check-in card at a department-designated drop point after 8 a.m.;

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting.

(c) A department blind or hunt site shall be assigned through a daily drawing through January 27[30].

(d) A department blind or hunt site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt site has not been assigned during the daily drawing.

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season.

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or

2. A mobility-impaired hunter may hunt from a boat.

(g) A party shall only hunt waterfowl:

1. From a department blind; or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a hunt site in December and January during the regular waterfowl season.

(h) On the Peal unit:

1. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

2. More than four (4) parties shall not hunt at the same time on Fish Lake;

3. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;

4. A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt site during December and January.

(i) On the Swan Lake Unit:

1. A person shall not hunt waterfowl from November 22 through December 4[25 through December 5];

2. The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and

3. Blind restrictions shall not apply to the Light Goose Conservation Order season.

(7) Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a blind site;

(b) Waterfowl refuge areas:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile fifty-one (51), at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile fifty-five and five-tenths (55.5) shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(8) Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(9) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(10) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech

Grove Road and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(11) Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(12) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(d) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, Number Four Lake, and Upper Goose Lake, all waterfowl hunting after November 1:

1. Shall be from hunt sites assigned by a random preseason drawing; and

2. Shall be within ten (10) yards of a hunt site, including periods of Mississippi River flooding.

(13) Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; and

(d) Within three-quarters (3/4) of a mile from the dam.

(14) Green River Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(15) Kaler Bottoms WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(16) Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys;

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A person hunting waterfowl shall remove decoys and personal items daily.

(17) Obion Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(18) Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15.

(c) Shooting hours shall be one-half (1/2) hours before sunrise until 2 p.m.

(d) A person shall not enter a hunting area prior to 4 a.m. daily.

(19) Peabody WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and

2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(20) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(21) Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.

(d) On the Grassy-Pond Powell's Lake Unit, a person hunting waterfowl:

1. Shall hunt:

a. From a department blind; or

b. From a blind within twenty-five (25) yards of a blind site.

2. Shall remove decoys and personal items from the area on a daily basis.

(e) On the Jenny Hole-Highlands Creek Unit, a person hunting waterfowl

1. Shall hunt:

a. From a department blind;

b. Within twenty-five (25) yards of a hunt site; or

c. No closer than 200 yards of another hunting party.

2. Shall remove decoys and personal items from the area on a daily basis.

(f) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(g) A person hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from a blind assigned by the department through a drawing as established in Section 5[~~6~~] of this administrative regulation;

2. May occupy a permitted blind if not claimed by the permittee within one (1) hour before sunrise;

3. Shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-five (25) if:

a.[~~(a)~~] The daily bag limit for ducks is greater than three (3); and

b.[~~(b)~~] The daily bag limit for Canada goose is greater than or equal to two (2);

4. Shall be accompanied by an adult if under eighteen (18) years of age; and

5. The waterfowl blind for a mobility-impaired person shall be open to the public if the permit holder or another mobility-impaired person has not claimed the blind on that day by one (1) hour before sunrise.

(h) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except for:

1. Waterfowl from November 1 through March 15; and

2. The modern gun deer season.

(i) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(j) Hunters drawn to hunt Sloughs WMA through a preseason draw shall submit a completed department-issued survey at the conclusion of their hunt or will be ineligible to participate in the waterfowl blind or quota draw the following year.

(22) South Shore WMA.

(a) The WMA shall be closed to hunting from November 15 through January 15, except for waterfowl[~~quota waterfowl hunting~~] and dove hunting.

(b) A hunter shall use a department blind.

(c) A department blind will be available daily on a first-come, first-served basis[~~A department blind shall be allocated by a pre-~~

~~season drawing~~].

(23) Taylorsville Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(24) Yatesville Lake WMA. 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 from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(25) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 5. (1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply through the vendor supplied by the department by calling 1-877-598-2401, or by completing the online application process on the department's Web site[~~website~~] at fw.ky.gov;[~~.~~]

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt may bring up to three (3) additional hunters.

(3) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of Barren River, Grayson Lake, Greenbo Lake, Lake Barkley, Lincoln Homestead, Nolin Lake, Paintsville Lake, Pennyrile Lake, Rough River Lake, and Yatesville Lake State Parks.

(2) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days that the park office is not open.

(3) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(4) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days that the park office is not open.

(5) Statewide waterfowl hunting requirements shall apply.

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts. (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries each Saturday and Sunday in January.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.

(3) A youth or mobility-impaired person shall register in advance and carry a department provided postcard notification on the day of the hunt.

(4) A mobility-impaired person shall also submit a mobility-impaired access permit.

(5) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(6) Each youth shall not be accompanied by more than one (1) adult.

(7) One (1) adult may accompany two (2) youths.

(8) A mobility-impaired hunter may be accompanied by no more than one (1) assistant who may also hunt.

(9) A person shall hunt from an established blind and shall not change blinds.

(10) A blind shall not be used by more than four (4) hunters.

(11) A person shall only discharge a firearm from a blind.

(12) A person shall not possess more than fifteen (15) shotshells.

(13) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(14) A person shall encase a firearm if traveling to and from a blind.

(15) Hunting shall end at noon, and hunters shall exit the area by 1 p.m.

(16) All decoys and equipment shall be removed at the end of each day's hunt.

(17) A hunter shall report harvest by depositing a completed hunt permit at the designated location.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: October 15, 2012

FILED WITH LRC: October 31, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 January 2, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2012–2013 waterfowl hunting requirements in accordance with the USFWS and Kentucky Department of Fish and Wildlife Resources management objectives.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates, bag limits and other hunting requirements. KRS 150.360 authorizes the department to restrict methods and hunting hours for taking 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 waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation manages waterfowl populations and hunting opportunity consistent with state, 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 the existing administrative regulation: This amendment sets hunting dates on Ballard and the Swan Lake Unit of Boatwright WMAs, requires hunters participating in preseason waterfowl blind draws on Sloughs WMA to participate in a post season survey and removes the pre-season draw for waterfowl hunting on South Shore WMA.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to provide adequate public hunting opportunity with minimal area use conflict.

(c) How does the amendment conform 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 that will be affected: 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 of 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 amendments in season dates and hunting requirements will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting seasons.

(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 or amended 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 continued opportunity for quality waterfowl hunting on public areas.

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

(a) Initially: This administrative regulation change will result in no additional cost to the Kentucky Department of Fish and Wildlife Resources to administer.

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

(6) What is the source of 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 funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl 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's Wildlife Division and Law Enforcement Division.

(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 of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits 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 amendment for the first year.

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

(c) How much will it cost to administer this program for the first year? No new costs will be incurred in the administration of this program for the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 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 within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the 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? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The greatest wintering and migrating waterfowl concentrations are located on public lands managed by the Department. The Department imposes more restrictive hunting regulations on these lands in effort to meet waterfowl management objectives while still providing quality hunting opportunity.

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

301 KAR 2:224. Waterfowl hunting zones.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 59 C.F.R. 20

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to make administrative regulations apply to a limited area or to the entire state.[~~Unevenly distributed waterfowl resources and federal requirements necessitate different season dates and harvest administrative regulations in different sections of the Commonwealth.~~] This administrative regulation establishes waterfowl hunting zones.

Section 1. Goose Hunting Zones. (1) The Western Goose Zone includes Henderson County and the portion of Kentucky west of:

(a) US 60 from the Henderson-Union County line to US 641;

(b) US 641 to Interstate 24;

(c) Interstate 24 to the Purchase Parkway; and

(d) The Purchase Parkway.

(2) The Ballard Zone[~~Reporting Area~~] includes the portion of Ballard County north or west of:

(a) The Ballard-McCracken County line to State Road 358;

(b) State Road 358 to US 60;

(c) US 60 to the city limits of Wickliffe;

(d) The city limits of Wickliffe to the center of the Mississippi River.

(3) Counties associated with the Ballard Reporting Area include:

(a) The portion of Ballard County not included in the Ballard Zone[~~Reporting Area~~];

(b) Carlisle and McCracken Counties; and

(c) The portions of Fulton, Graves, Hickman and Marshall Counties in the Western Goose Zone.

(4) The Henderson-Union Zone[~~Reporting Area~~] includes Henderson County and the portion of Union County in the Western Goose Zone.

(5) Counties associated with the Henderson-Union Zone[~~Reporting Area~~] include those portions of Crittenden, Livingston and Lyon Counties in the Western Goose Zone.

(6) The Pennyroyal-Coalfield Goose Zone includes the area from the Western Goose Zone to and including Simpson, Warren, Butler, Ohio, and Daviess Counties.

(7) The Eastern Goose Zone includes the portions of Kentucky not included in the Western or Pennyroyal-Coalfield Goose Zones.

(8) The West-Central Special Hunt Zone includes:

(a) Muhlenburg County;

(b) Ohio County south of Rough River;

(c) Butler County west of Highway 79 and north of Highway 70;

(d) Hopkins County:

1. East of Highways 814 and 109;

2. South of US 41A between Highways 814 and Madisonville; and

3. South of Highway 85 east of Madisonville.

(9) The Northeast Special Hunt Zone includes Bath, Menifee, Morgan and Rowan Counties, except Paintsville Lake and its shoreline in Morgan County.

Section 2. Duck, Coot, and Merganser Hunting Zones. (1) The Western Duck Zone includes the portion of Kentucky in the Western and Pennyroyal-Coalfield Goose Zones.

(2) The Eastern Duck Zone includes the portion of Kentucky not in the Western Duck Zone.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: October 15, 2012

FILED WITH LRC: October 31, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 January 2, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation changes the name of the Ballard and Henderson-Union Reporting Areas to the Ballard and Henderson-Union Zones.

(b) The necessity of the administrative regulation: To reduce hunter confusion about regulations pertaining to these specific areas.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates and 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.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation manages waterfowl populations and hunting opportunity 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 the existing administrative regulation: It will change the name of the Ballard and Henderson-Union Reporting Areas to the Ballard and Henderson-Union Zones. There will be no changes other than the name of these two areas.

(b) The necessity of the amendment to this administrative regulation: The USFWS suspended Canada goose harvest quotas and reporting requirements within these two reporting areas with adoption of a new Mississippi Valley Population Management Plan. Kentucky continues to use area specific regulations to meet state and regional waterfowl management objectives but the term "reporting area" confused hunters who thought they were still mandated to report harvest. Changing the name from "reporting area" to zone will help reduce this confusion.

(c) How the amendment will assist in the effective administration of the 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 that will be affected: 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 of 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 change in name from "reporting area" to "zone" will be published in the fall waterfowl hunting guide and on the department's Web site. Hunters will need to follow all applicable amendments to the hunting seasons.

(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 reduced confusion regarding waterfowl reporting requirements while continuing provide increased opportunity to hunt waterfowl in the state.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

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

(6) What is the source of 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 funding to implement this administrative regulation.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person:Rose Mack

(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's Wildlife Division and Law Enforcement Divisions.

(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 establish hunting season dates and 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.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 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 within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the 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? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The season on snow geese is shorter than the federal framework because migration patterns for this species result in a paucity of birds early in the federal framework. The Canada goose season in the Northeast Goose Zone is shorter than is permitted in the rest of the state because of the desire to maintain a huntable population in that region of the state.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(Amendment)

405 KAR 5:032. Permit requirements.

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300

STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Energy and Environment[~~Environmental and Public Protection~~] Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation specifies[~~certain~~] information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans. This administrative regulation also addresses the waivers and approvals necessary to conduct noncoal mineral operations, including those of other agencies, and establishes provisions concerning review of permits and other permit related procedural matters.

Section 1. General. (1) This administrative regulation shall pertain to a[~~any~~] person who applies for a permit to conduct mineral operations.

(2) Preliminary permit requirements.

(a) A person or mineral operator desiring a permit shall submit a preliminary map at a scale one (1) inch equals 400 feet or 500 feet, marked to show the proposed permit area and adjacent areas,[~~;~~] including[~~but not limited to,~~] location of access roads, spoil or waste areas, and sedimentation ponds.

(b) Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with appropriate persons including appropriate representatives of the applicant.

(3) Permanent permit requirements. An original and two (2) complete, separately bound and distinct copies of the application shall be submitted to the cabinet, at the Department for Natural Resources, Division of Mine Reclamation and Enforcement[~~Field Services~~], Noncoal Review Branch, #2 Hudson Hollow, Frankfort, Kentucky 40601, or[~~to the Division of Field Services~~] at one (1) of the following regional offices:

(a) London Regional Office, Regional State Office Building, 85 State Police Road, London, Kentucky 40741-9011;

(b) Madisonville Regional Office, 625 Hospital Drive, Madisonville, Kentucky 42431-1683;

(c) Middlesboro Regional Office, 1804 East Cumberland Avenue, Middlesboro, Kentucky 40965-1229;

(d) Pikeville Regional Office, 121 Mays Branch Road, Pikeville, Kentucky 41501-9331; or

(e) Prestonsburg Regional Office, 3140 South Lake Drive, Suite 6, Prestonsburg, Kentucky 41653-1410.

Section 2. Identification of Interests. (1) Each permit application shall contain the names and addresses of:

(a) The applicant, including[~~his~~] phone number;

(b) The registered agent for service of process, if applicable, including[~~his~~] phone number;

(c)[~~Any~~] Owners, partners, or if a corporation,[~~any~~] officers or stockholders owning ten (10) percent or more stock;

(d) The project engineer, along with[~~his~~] registration number and name of associated firm;

(e) The company and engineer to[~~in~~] which correspondence concerning the subject permit shall be addressed[~~to~~];

(f) Surface owners of record within the area proposed for mining, including areas overlying underground workings;

(g) Mineral owners of record within the area proposed for mining, including areas overlying underground workings; and

(h) Surface owners of record within 500 feet of the proposed permit boundary and areas overlying underground workings.

(2) If the company has undergone a name change or changes during the previous five (5) years, the applicant shall list the names.

(3) The legal structure of the applicant shall be specified[~~applicant shall specify the applicant's legal structure~~].

(4) If the business is owned by an individual or is a partnership, and is performed under an assumed name, the applicant shall specify the county and state where the name is registered.

(5) The applicant shall list previous Kentucky permits held by the applicant or an[~~any~~] individual, partnership, or corporation associated with the applicant.

(6) The applicant shall provide the name of the contact person at the site, including[~~his~~] phone number.

(7) The applicant shall specify the type of application, along with the permit number.

Section 3. Bond Information. (1) If bond is required pursuant to[~~under~~] 405 KAR 5:082, the following information shall be provided in the permit application:

(a)[~~(1)~~] The bond amount per acre;

(b)[~~(2)~~] The total amount of bond; and

(c)[~~(3)~~] The bond type.[~~:~~]

(2)[~~(a)~~] If a surety is used, the applicant shall provide the bond number and surety.

(3)[~~(b)~~] If a certificate of deposit is used, the applicant shall provide the bank name and CD number.

(4)[~~(c)~~] If a letter of credit is used, the applicant shall provide the bank name and letter of credit number.

Section 4. Equipment Inventory. The permit application shall contain a list of all equipment, model numbers, and condition of the equipment proposed to be used for removing overburden and reclaiming the affected area of the proposed mineral operation.

Section 5. Waivers and Approvals. (1) If blasting will occur within 300 feet of an occupied dwelling or if mineral extraction will occur within 100 feet of an occupied dwelling, the permit application shall contain a waiver from the owner, acknowledging approval of the activity.

(2) Except where mine access roads or haul roads join the right-of-way, if the proposed mineral operation will occur within 100 feet of the right-of-way of a public road, or if relocation of a public road is proposed, the permit application shall contain proof of notification to and[~~any~~] required approvals from the appropriate agency or local government with jurisdiction over the road.

(3) If a permanent pond other than a final pit impoundment with no embankment is proposed, approval from the landowner for the structure and a written acknowledgment from the landowner that the mineral permittee shall not have[~~will have no~~] continuing maintenance responsibility after permit release shall be required.

(4) If relocation, channelization, or other significant disturbance to an intermittent or perennial stream is proposed, or if the proposed mineral operation will occur within, or in any way impact, a floodplain, wetland, or other water of the commonwealth, the applicant shall obtain the appropriate permits and approvals from the United States Army Corps of Engineers and the Kentucky Division of Water. Approval shall also be required by the cabinet for[~~any~~] disturbances within 100 feet of an intermittent or perennial stream.

(5) If a sedimentation pond or[~~any~~] other point source discharge is proposed, a KPDES permit from the Kentucky Division of Water shall be required.

(6) If water withdrawal is proposed, a Water Withdrawal Permit shall be obtained from the Kentucky Division of Water.

(7) If there are local zoning regulations, the applicant shall state this in the application to the Division of Mine Reclamation and Enforcement.

(8) If applicable, approval from the owner of the utilities and facilities as provided in 405 KAR 5:015, Section 4(6) shall be required.

Section 6. Right to Mine. The permit application shall contain a signed statement by the applicant attesting that the applicant has the legal right to mine, along with the appropriate date.

Section 7. Verification of Application. The permit application shall contain a statement, signed by the applicant, acknowledging that all statements and representations, made in the application, are true and correct.

Section 8. Map Requirements. The permit application shall include original and two (2) copies of a section of the appropriate United States Geological Survey Topographical Map or an equivalent format which shall:

(1) Delineate the proposed permit area and[~~any~~] areas, if applicable overlying proposed underground workings;

(2) Be of a scale of not more than one (1) inch to 400 feet;

(3) Show all other mine operations within 500 feet of the proposed permit boundaries and proposed underground workings, including those within the proposed permit boundaries;

(4) Delineate the property boundaries of all landowners within the proposed permit area and areas overlying proposed underground workings and all landowners within 500 feet of the proposed permit boundary and areas overlying proposed underground workings, along with the names of all the landowners;

(5) Delineate all proposed access roads onto the proposed mineral operation;

(6) Show the site slope;

(7) Show the name and location of all streams, rivers, lakes, outstanding resource waters pursuant to 401 KAR 10:031[~~401 KAR 5:026 and 401 KAR 5:031~~], or other public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools and other public buildings; oil and gas wells; public properties such as, parks, Wildlife Management Areas, and nature preserves, and utility lines on the area to be affected, and within 1,000 feet of the proposed permit boundary;

(8) Locate[~~any~~] sites listed on the National Register of Historic Places and[~~any~~] known archaeological sites;

(9) Delineate[~~any~~] wetlands that[~~which~~] may be affected by the proposed mineral operation;

(10) Show the drainage pattern on and away from the area to be affected, including the direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and the streams or tributaries to receive discharges from the proposed mineral operation;

(11) Show[~~any~~] proposed pit area, sediment structures, storage areas, and[~~any~~] other facilities and features related to the mineral operation;

(12) Provide a north point arrow;

(13) Contain a legend, which shall:

(a) Provide the company name;

(b) Provide the application number;

(c) Provide the county and quadrangle names;

(d) Provide the site coordinates;

(e) Provide the site address;

(f) Provide the map scale and contour interval;

(g) Provide a description of the site location including:

1. The nearest stream; and

2. The distance and direction from the nearest road intersection or town;

(h) Identify each insignia, symbol, number, or letter used to designate features, facilities, or areas;

(i) Provide acreage breakdowns of the various mineral operation features and facilities including, pit areas, storage areas, sediment structures, access roads, and the total number of acres of area to be affected;

(j) Specify the deposit to be mined; and

(14) Provide a signed, notarized statement that the map has been prepared and certified by a professional engineer, registered pursuant to[~~under~~] the provisions of KRS Chapter 322. This statement shall read, "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the mineral operation laws and administrative regulations of the state". This statement shall include:

(a) The engineer's registration number; and

(b) The date on which the map was prepared.

Section 9. General Site Information. The permit application shall contain the following general site information:

(1) Location of the mineral operation to include:

(a) Latitude and longitude;

(b) The nearest community;

(c) The name of the nearest stream;

(d) The nearest public road intersection; and

(e) The name of the United States Geological Survey quadrangle or quadrangles, in which the proposed mineral operation will occur;[~~.~~]

(2) A county by county list of the types of disturbances planned, accompanied by the acreage to be involved with each disturbance;[~~.~~]

(3) Specification of the mineral to be extracted;[~~.~~]

(4) Specification of the major watershed or watersheds, which will be affected, by the proposed mineral operation;[~~.~~]

(5) Specification if[~~of whether any~~] active discharges exist that[~~which~~] may affect the proposed mineral operation. If so, provide the following information:

(a) The pH of the discharge; and

(b) The source of the discharge;[~~.~~]

(6) Specification if[~~of whether~~] underground workings will be encountered, and the distance, in feet, to the nearest active deep mine; and[~~.~~]

(7) Specification of the types of disturbances planned for the proposed mineral operation.

Section 10. Cultural Resource Information. The applicant shall specify if[~~whether any~~] sites listed on the National Register of Historic Places or[~~any~~] known archaeological sites exist within, or adjacent to, the proposed permit boundary.

Section 11. Environmental Resources Information. (1) The applicant shall indicate if[~~whether~~] there are[~~any~~] Wildlife Management Areas, wildlife refuges, nature preserves, state or national parks, state or national forests, or similar public lands within the vicinity of the proposed mineral operation. If these lands exist, the applicant shall delineate them on the map.

(2) The applicant shall indicate if[~~whether~~] disturbances within the channel of, or within 100 feet of, an intermittent or perennial stream are proposed.

(3) The applicant shall indicate if[~~whether~~] there are[~~any~~] outstanding resource waters, pursuant to 401 KAR 10:031[~~401 KAR 5:026 and 401 KAR 5:031~~], within the vicinity of the proposed mineral operation. If so, the applicant shall delineate these waters on the map.

Section 12. Surface Water Quantity and Quality Protection Plan. The permit application shall contain a surface water quantity and quality protection plan, which shall demonstrate to the satisfaction of the cabinet compliance with 405 KAR 5:050 and 405 KAR 5:055, and shall include the following information:

(1) The number of sedimentation ponds proposed, accompanied by designs, drawings, and specifications for each structure to include:

(a) The structure number;

(b) The number of acres to be disturbed within the drainage area;

(c) The number of acres in the drainage area;

(d) Sediment storage capacity;

(e) Storage capacity at the principal spillway;

(f) Storage capacity at the emergency spillway;

(g) Spillway capacities;

(h) Structure height measured from the downstream toe; and

(i) All other engineering designs, dimensions, and calculations required to demonstrate compliance with 405 KAR 5:050 and 5:055.

(2) If sediment removal becomes necessary, the permit application shall contain a description of how sediment shall[~~will~~] be removed and disposed.

(3) The applicant shall state if[~~whether~~] any permanent sedimentation ponds are proposed.

(4) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate all other sediment control structures.

(5) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate[~~any~~] other methods proposed for protecting surface waters.

Section 13. Permanent and Temporary Impoundments. If an impoundment is part of the plan of reclamation or method of mineral operation, the permit application shall contain detailed designs and specifications for the impoundment that[~~which~~] demonstrates compliance with 405 KAR 5:055.

Section 14. Spoil Handling Plan. The permit application shall contain or be accompanied by a plan for the handling and disposal of spoil, in excess of that involved with backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 15. Toxic Materials Handling Plan. The permit application shall contain, or be accompanied by, a plan for the handling of acid-forming or toxic-forming materials, waste materials, or other unstable materials that[~~which~~] shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 16. Backfilling and Grading Plan. The permit application shall contain, or be accompanied by, a plan for backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 17. Topsoil Handling and Restoration Plan. The permit application shall contain, or be accompanied by, a plan for the handling and restoration of topsoil, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 18. Land Use Plan. (1) The permit application shall contain a land use plan, which demonstrates compliance with 405 KAR 5:065, and is consistent with 405 KAR 5:070, that:

(a) Specifies the premining use or uses within, and adjacent to, the proposed permit boundary;

(b) Specifies the intended postmining land use for the proposed permit area; and

(c) If the postmining land use is different from the premining land use, shall provide a discussion justifying the change.

(2) The land uses are listed at 405 KAR 5:065, and are defined in 405 KAR 5:002.

Section 19. Revegetation Plan. The permit application shall contain a revegetation plan which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:070, and is consistent with 405 KAR 5:065 and that provides the following information:

(1) Identification of the material that will be redistributed on the regraded area as a plant growth medium;[~~.~~]

(2) Permanent grass species, permanent legume species, and quick cover species to be seeded during revegetation, along with their application rates (pounds/acre);[~~.~~]

(3) Tree and shrub species to be planted during revegetation, along with their stocking rates (number/acre); and[~~.~~]

(4) The type of mulch to be used, along with the mulching rate (pounds or tons/acre), or other soil stabilization practices to be incorporated.

Section 20. Designs and Attachments. (1) The permit application shall be accompanied by appropriate descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate proposed sediment control structures, as required under Sections 12 and 13 of this administrative regulation; spoil disposal fills; access and haul roads; stream crossings; and ditches.

(2) Access and haul road designs shall conform to the specifications established in 405 KAR 5:040.

(3) The designs and plans shall demonstrate, to the satisfaction of the cabinet, compliance with all pertinent requirements of 405 KAR Chapter 5, and shall be certified by a Kentucky-registered professional engineer.

Section 21. Newspaper Advertisement: Publication of Notice of Intention to Mine. (1) An applicant for a new permit required pursuant to[~~under~~] KRS Chapter 350, shall publish at least once, a public notice of the[~~his~~] application for that permit.

(a) The publication shall be made by advertisement in the newspaper of largest bona fide circulation, in the county where the proposed mining site is located.

(b) If the proposed mining site is in more than one (1) county, publication shall be required in the newspaper of largest bona fide circulation in each county.

(2) The publication shall be made not less than ten (10) nor more than thirty (30) days prior to the filing of the permit application with the department.

(3) The public notice of the intention to file an application shall be entitled, "Notice of Intention to Mine Noncoal Minerals", and may be in a manner and form prescribed by the department and shall include at a minimum[~~, though not be limited to,~~] the following:

(a) Name and address of the applicant;

(b) Permit application number;

(c) The location of the proposed mining site; and

(d) A brief description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed mineral operations.

(4) The applicant for a new permit required by KRS Chapter 350 shall establish the date and place at that[~~which~~] the "Notice of Intention to Mine Noncoal Minerals" was published, by attaching to the[~~his~~] application proof[~~satisfactory to the cabinet~~] of the time, place, and content of the published notice.

Section 22. Permit Revisions. A revision to a permit shall be obtained if the mineral permittee desires to modify the[~~his~~] mineral operations or make changes to the original permit that does not involve increased acreage. The following stipulations shall apply to permit revisions:

(1) The application for revision shall be filed with the cabinet and approved prior to the date on which the mineral permittee expects to revise the mineral operation;

(2) The term of a permit shall remain unchanged by a revision; and

(3) The application for revision shall be submitted using the "Application for Surface Disturbance Mining Permit Noncoal Mining", Form NCR-2.

Section 23. Permit Amendments. Upon application by the mineral permittee, the cabinet may amend a valid existing permit, so as to increase the permitted area to be affected by mineral operations under the permit. Applications for amendment may be filed at any time during the term of the permit.

(1) The mineral permittee shall file an application in the same form and with the same content as required for an original permit pursuant to[~~under~~] this administrative regulation.

(2) The mineral permittee may need to file a supplemental bond with the cabinet in an amount to be determined, as provided under 405 KAR 5:082, for each additional acre or fraction of an acre.

Section 24. Permit Renewals. A[~~Any~~] valid permit issued pursuant to 405 KAR Chapter 5 shall carry with it, the right of successive renewal upon expiration of the term of the permit. Successive renewal shall be allowed only for those areas specifically within the boundaries of the existing permit.

(1) An application for renewal of a permit shall be filed with the cabinet at least sixty (60) days prior to the expiration date of the permit.

(2) If an application for renewal of a valid existing permit includes a proposal to extend the mineral operation beyond the boundaries authorized pursuant to[~~under~~] the existing permit, the portion of the application that[~~which~~] addresses a[~~any~~] new land area[~~areas~~] shall be subject to all requirements of 405 KAR Chapter 5, and a new original permit application shall be required for these areas.

(3) The permit renewal shall be issued if the following requirements are met:

(a) The application for renewal shall be submitted using the "Application for Surface Disturbance Mining Permit Noncoal Mining", Form NCR-2;

(b) The mineral permittee shall submit all revised or updated information required by the cabinet, including at a minimum[~~but not limited to~~]:

1. An updated operational plan current to the date of request for renewal; and

2. Specification of the status and extent of all mineral operations on the existing permit area;

(c) The present mineral operation is in compliance with KRS Chapter 350 and 405 KAR Chapter 5; and

(d) The mineral permittee shall provide[~~any~~] additional bond required in accordance with 405 KAR 5:082.

Section 25. Permit Succession. (1) There shall not be[~~no~~] succession on the permitted area without the prior written approval of the cabinet.

(2) The initial mineral permittee shall notify the cabinet, in writing, of a[~~any~~] proposed succession.

(3) The cabinet may release the first mineral operator from reclamation responsibility pursuant to[~~under~~] 405 KAR Chapter 5 as to that particular mineral operation, except that[~~however~~]:

(a) There shall not be release until the successive mineral operator has been issued a permit and has otherwise complied with the requirements of 405 KAR Chapter 5; and

(b) The successor shall immediately assume, as a part of his obligation pursuant to[~~under~~] 405 KAR Chapter 5, all liability for the reclamation of the area affected by the former permitted mineral operation.

(4) If the cabinet has given its prior written approval to the succession, a successor in interest to a mineral permittee who applies for a successor permit within thirty (30) days of succeeding to the interest, and who obtains immediate bond coverage at least equivalent to the amount of the bond of the original mineral permittee, may continue mineral operations according to the approved permit plan of the original mineral permittee until the successor's application is granted or denied.

(5) The bond coverage provided by the successor in interest shall take effect immediately upon the commencement of mineral operations by the successor.

Section 26. Review of Permits. (1) Within thirty (30) working days of receiving the permit application, the cabinet shall make one (1) of three (3) decisions:

(a) To technically withdraw the permit application;

(b) To deny the permit application; or

(c) To approve the permit application.

(2) If the permit application is technically withdrawn or denied, the thirty (30) working day period shall be stopped on the date of this decision.

(3) The time period shall restart on the date[~~when~~] the permit application is returned with deficiencies corrected.

(4) If the application is not approved, the cabinet shall establish[~~set forth~~] the reasons, in writing, for which the application is not approved; and the cabinet may propose modifications, delete areas, or reject the entire application.

(5) If the mineral permittee disagrees with the decision of the cabinet he or she may, by written notice, request a hearing by the cabinet, pursuant to 405 KAR 5:095.

(6) The cabinet shall notify the applicant by registered mail within twenty (20) days after a decision is made.

Section 27. Criteria for Permit Approval and Denial. An[~~No~~] application for a permit and[~~no~~] mineral operation shall not be approved[~~,~~] unless the application affirmatively demonstrates and the cabinet determines on the basis of information established [~~set forth~~] in the application, and other available pertinent information, that:

(1) The permit application is accurate, complete, and that the applicant has complied with all requirements of 405 KAR Chapter 5;[~~,~~]

(2) The mineral operation proposed can be carried out under the method of mineral operation outlined in the permit application in a manner that will satisfy all requirements of 405 KAR Chapter 5;[~~,~~]

(3) The proposed mineral operation shall[~~will~~] not constitute a hazard to, or do physical damage to life, to an occupied dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property, or to members of the public[~~,~~] or their real and personal property.

(a) All necessary measures shall be included in the method of mineral operation in order to eliminate the hazard or damage.

(b) If it is not technologically feasible to eliminate the hazard or damage by adopting specifications in the method of mineral operation, then that part of the mineral operation that[~~which~~] constitutes the cause of the hazard or damage shall be deleted from the application and mineral operation;[~~,~~]

(4) The proposed mineral operation shall[~~will~~] not adversely affect natural hazard lands or a wild river established pursuant to KRS Chapter 146;[~~,~~]

(5) The proposed mineral operation shall[~~will~~] not be inconsistent with other mineral operations anticipated in areas adjacent to the proposed permit area; and[~~,~~]

(6) The proposed permit area is:

(a) Not included within the boundaries of the National Park System, the National Wildlife Refuge System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), and the National Recreation Areas designated by Act of Congress;

(b) Not included within 300 feet, measured horizontally, of a[~~any~~] public park, public building, school, church, community, or institutional building;

(c) Not included within 100 feet, measured horizontally, of a cemetery, and access to be provided to a cemetery at all times;

(d) Not within 100 feet, measured horizontally, of the outside right-of-way line of a[~~any~~] public road, except:

1. Where mine access roads or haul roads join the right-of-way; or

2. Where the cabinet allows the roads to be relocated or allows disturbances within 100 feet of the roads, once the applicant has obtained necessary approval from the governmental authority with jurisdiction over the public road, as required under Section 5 of this administrative regulation; and if after public notice and opportunity for public hearing a written finding is made, by the cabinet, that the interest of the public and the landowners affected thereby shall[~~will~~] be protected;

(e) Not within the distances specified in Section 5 of this administrative regulation, measured horizontally, of an occupied dwelling unless the applicant submits with the permit application a written affidavit from the owner of the dwelling specifying an allowance, as required by Section 5 of this administrative regulation.

1. This waiver shall be knowingly and intelligently executed, and be separate from a lease or deed, unless the lease or deed contains an explicit waiver.

2.a. A waiver[~~Waivers~~] obtained from previous owners shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver when the dwelling was purchased.

b. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to KRS 382.110 or if the mining has proceeded to within the distance limit prior to the date of purchase; and

(f) Not within 100 feet of an intermittent or perennial stream unless appropriate permits and approvals, required pursuant to[~~under~~] Section 5 of this administrative regulation, have been obtained authorizing mineral operations at a closer distance to, or through, the stream. The authorization shall not be given unless the applicant demonstrates to the satisfaction of the cabinet that the authorization is environmentally sound and that KRS Chapter 350 and 405 KAR Chapter 5 have been satisfied.

Section 28. Permit Conditions; Permit Term. (1) Permits issued by the cabinet may contain certain conditions necessary to ensure that the mineral operation shall[~~will~~] be conducted in compliance with KRS Chapter 350 and 405 KAR Chapter 5.

(2) All mineral operations shall be conducted in accordance with KRS Chapter 350 and 405 KAR Chapter 5 and[~~any~~] conditions of the permit.

(3) Each permit shall be issued for a fixed term not to exceed five (5) years.

Section 29. Denial of a Permit for Past Violations. (1) A mineral operator or person whose permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350 and 405 KAR Chapter 5 with respect to all permits issued him.

(2) A mineral operator or person whose surface coal mining operation permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350, 405 KAR Chapters 1, 3, and 7 through 24 with respect to all surface coal mining operation permits issued him.

(3) A mineral operator or person who has forfeited any bond filed with the cabinet for a[~~any~~] mineral operation or a[~~any~~] surface coal mining operation shall not be eligible to receive another permit or begin another mineral operation unless:

(a) The land for which the bond was forfeited has been reclaimed without cost to the state; or

(b) The mineral operator or person has paid a sum determined by the cabinet after the Division of Abandoned Mine Lands has prepared an estimate of the cost to reclaim the lands, based upon site specific conditions.

(4) If the applicant, mineral operator, a[~~any~~] subcontractor, or a[~~any~~] person acting on behalf of the applicant[~~,~~] has either conducted activities with a demonstrated pattern of willful violations of 405 KAR Chapter 5, or has repeatedly been in noncompliance of this chapter, then the permit application shall be denied. A[~~; however, a~~] mineral permittee shall not be relieved of responsibility with respect to a[~~any~~] permit issued to him.

(5) If the cabinet determines that an[~~any~~] activity of the applicant regulated pursuant to 405 KAR Chapter 5 is currently in violation of KRS Chapters 149, 151, 224, 350 through 354, 400 KAR Chapters 1 through 3, 401 KAR Chapters 4 through 100, 402 KAR Chapter 3, or 405 KAR Chapters 1 through 30, then the cabinet shall require the applicant, before the issuance of the permit, to either:

(a) Submit proof that[~~which~~] can be substantiated by the cabinet that the violation has been corrected, or is in the process of being corrected in good faith; or

(b) Establish, by proof that can be substantiated by the cabinet, that the applicant has filed and is presently pursuing, a good faith administrative or judicial appeal to contest the validity of the violation.

(6) If the applicant submits the proof specified pursuant to[~~under~~] subsection (5) of this section, then the cabinet may issue the permit with an appropriate condition that either the reclamation work be continued in good faith until completion or that if the applicant loses his action contesting the violation that the violation be corrected within a specified time. Failure to comply with a condition[~~any conditions~~] shall be grounds for revocation of the permit.

(7) If the applicant disagrees with the cabinet's determination

pursuant to[~~under~~] this section, then he or she has the right to request an administrative hearing pursuant to 405 KAR 5:095.

Section 30. Permit Conference and Public Comment. (1) Procedures for requests. A[~~Any~~] person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of any federal, state or local government agency or authority, may request that the cabinet hold an informal conference on an[~~any~~] application for a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requester at the conference; and[~~.~~]

(b) Be filed with the cabinet within fifteen (15) days of the newspaper advertisement.

(2)(a) The conference shall be held at the Division of Mine Reclamation and Enforcement[~~Field Services~~].

(b) The conference shall be held within fifteen (15) days of the date of the request. The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference.

(c) The conference shall be conducted by a representative of the cabinet who shall[~~may~~] accept oral or written statements and[~~any~~] other relevant information from a[~~any~~] party to the conference.

(d) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference shall not be held.

(e) All comments and evidence shall be taken into consideration by the Division of Mine Reclamation and Enforcement[~~Division of Field Services~~] in Frankfort before a final decision is made on the disposition of the application.

(f) The record shall be maintained and shall be accessible to the parties during the life of the mineral operation.

(3) A[~~Any~~] person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of a[~~any~~] federal, state, or local government agency or authority, may submit written comments to the cabinet.

Section 31. Existing Mineral Operations. (1) Existing mineral operations that were not permitted or regulated prior to February 1995[~~the effective date of this administrative regulation~~] shall obtain a permit within 180 days of February 1995[~~the effective date of this administrative regulation~~].

(2) The cabinet may grant limited variances from the distance limitations of Section 27(6) of this administrative regulation if[~~where~~] an existing disturbance within those limits was made prior to February 1995[~~the effective date of this administrative regulation~~] by an existing mineral operation that was not permitted or regulated prior to February 1995[~~the effective date of this administrative regulation~~]. These variances shall only be granted if[~~when no~~] practical and reasonable remedial compliance measures cannot[~~measure can~~] be identified.

(3) The distance limitations of Section 27(6) of this administrative regulation shall not apply if[~~where~~] lesser distance limitations have been approved in a valid permit issued prior to February 1995[~~the effective date of this administrative regulation~~]. The distance limitations established in those permits shall continue to apply.

Section 32. Incorporation by Reference. (1)[~~The following material is incorporated by reference:~~] "Application for Surface Disturbance Mining Permit Noncoal Mining, NCR-2", March, 1990, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 25, 2012

FILED WITH LRC: October 29, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 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 December 18, 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 January 2, 2013. 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 specifies information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans. This administrative regulation also addresses the waivers and approvals necessary to conduct noncoal mineral operations, including those of other agencies, and establishes provisions concerning review of permits and other permit related procedural matters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a permit applicant the necessary information to acquire a noncoal mining permit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028 authorizes the Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations. This administrative regulation provides information to applicants on noncoal mining permit requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 350.028 authorizes the Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations. This administrative regulation provides sufficient detail to permit applicants regarding noncoal permitting requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow applicants to provide maps in alternate formats as part of their permit application.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow the cabinet to accept alternate mapping formats as part of the permit application.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by providing the applicant an option of an alternate format for maps provided as part of the permit application.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 authorizes the Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations. The amendment will allow applicants to provide alternative formats for submitting maps as part of their permit application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This change will affect all noncoal industry representatives and those individuals that perform engineering work for the industry by allowing alternate methods of submitting maps to the department for non coal applications. In 2011 there were eighty (80) permit applications submitted to the department and as of 10/2012 there were sixty (60) permit applications submitted.

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

including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no requirements that the entities will be required to take. They are provided the option of providing an alternative mapping format.

(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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities in question (3) will benefit by being able to submit an alternate mapping format.

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

(a) Initially: There will not be a cost associated with this amendment.

(b) On a continuing basis: There will not be a cost associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The noncoal program is funded by the General Fund.

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

(9) TIERING: Is tiering applied? No. Each applicant is held to the same permit requirement standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Reclamation and Enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, KRS 350.029, and KRS 350.240.

(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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 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 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 Kentucky State Penitentiary.

Section 1. Incorporation by Reference. (1) Kentucky State Penitentiary policies and procedures, November 14, 2012[~~December 12, 2006~~], are incorporated by reference. Kentucky State Penitentiary policies and procedures include:

KSP 01-02-01 Public Information and Media Communications (Amended 11/8/2005)
KSP 02-01-02 Inmate Canteen (Amended 11/8/2005)
KSP 02-12-02 Inmate Funds (Amended 11/14/12[~~10/12/06~~])
KSP 03-01-02 Tobacco Free (Added 11/14/12)
KSP 06-01-02 Inmate Master Records (Amended 11/14/12[~~12/12/06~~])
KSP 10-02-01 Special Management Unit Operating Procedures, Living Conditions and Classification (Amended 11/14/12[~~12/12/06~~])
KSP 10-02-05 Death Row (Amended 12/12/06)
KSP 10-04-01 Special Needs Inmates ([~~As~~] Amended 11/14/12[~~12/12/06~~])
KSP 13-01-01 Pharmacy Procedures (Amended 11/8/2005)
KSP 13-02-01 Health Services (Amended 11/8/2005)
KSP 13-02-03 Continuity of Care (Amended 12/12/06)
KSP 13-02-04 Levels of Care and Staff Training (Amended 11/8/2005)
KSP 13-02-05 Consultations (Amended 9/14/2005)
KSP 13-02-08 Health Records (Amended 12/12/06)
KSP 13-02-09 Psychiatric and Psychological Services (Amended 11/8/2005)
KSP 13-02-13 Optometric Services (Amended 11/14/12[~~9/14/2005~~])
KSP 13-06-02 Informed Consent (Amended 11/8/2005)
KSP 14-03-01 Marriage of Inmates (Amended 11/14/12[~~10/12/06~~])
KSP 14-04-01 Legal Services (Amended 11/14/12[~~11/8/2005~~])
KSP 14-06-01 Inmate Grievance Procedure (Amended 9/14/2005)
KSP 15-06-01 Adjustment Procedures (Amended 9/14/2005)
KSP 16-01-01 Visiting Program (Amended 11/14/12[~~12/12/06~~])
KSP 16-02-01 Inmate Correspondence (Amended 11/14/12[~~10/12/06~~])
KSP 16-03-02 Inmate Telephone Access (Amended 11/8/2005)
KSP 16-04-01 Inmate Packages (Amended 11/8/2005)
KSP 17-01-01 Inmate Personal Property (Amended 9/14/2005)
KSP 17-01-02 Disposition of Unauthorized Property (Amended 11/8/2005)
KSP 17-01-03 Procedures for Providing Clothing, Linens and Other Personal Items (Amended 11/14/12[~~11/8/2005~~])
KSP 17-01-04 Property Room, Clothing Storage and Property Inventory Control (Amended 11/8/2005)
KSP 17-02-01 Inmate Reception and Orientation (Amended 11/14/12[~~11/8/2005~~])
KSP 18-01-01 General Guidelines and Functions of the Classification Committee (Amended 11/14/12[~~9/14/2005~~])
KSP 18-06-01 Classification Document (Amended 11/8/2005)
KSP 18-10-01 Preparole Progress Report (Amended 11/14/12[~~9/14/2005~~])
KSP 18-15-01 Protective Custody Unit (Amended 9/14/2005)
KSP 19-04-01 Inmate Work Programs and Safety Inspections

of Inmate Work Locations (Amended 7/12/00)
KSP 19-04-02 Unit Classification Committee and Inmate Work Assignments (Amended 11/14/12[~~12/12/06~~])
KSP 19-05-01 Correctional Industries (Amended 9/14/2005)
KSP 20-04-01 Educational Programs (Amended 11/14/12[~~4/15/02~~])
KSP 22-04-01 Arts and Crafts Program (Amended 12/12/06)
KSP 23-01-03 Religious Services (Amended 11/14/12[~~11/8/2005~~])
KSP 25-01-01 Release Preparation Program (Amended 11/14/12[~~Added 12/12/01~~])
KSP 25-01-02 Inmate Release Procedure (Amended 11/14/12[~~9/14/2005~~])
KSP 25-10-01 Discharge of Inmates by Shock Probation (Amended 11/14/12[~~Added 7/12/00~~])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, Department of Corrections, 275 E. Main Street, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: November 7, 2012

FILED WITH LRC: November 14, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 27, 2012 at 9:00 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, 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 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by the close of business January 2, 2013 to the contact person.

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**.**

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker (502-564-3279)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Kentucky State Penitentiary, including the rights and responsibilities of Kentucky State Penitentiary employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation governs the operations of the Kentucky State Penitentiary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Kentucky State Penitentiary employees and the inmate population concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

(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 update the policies and procedures to reflect changes in operations at the institution, clarify language, and update ACA standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky State Penitentiary.

(d) How the amendment will assist in the effective administration of the statutes: This will help Kentucky State Penitentiary to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 348 employees of the correctional institution, 865 inmates, and all visitors to the Kentucky State Penitentiary.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of KSP will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increase in cost is not anticipated to the entities from the changes in operations made in the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institution.

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

Initially: No additional cost is anticipated.

On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for the 2012-2013 biennium.

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

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

The regulation establishes a fee for optometric services. The amendment does not increase or decrease any fee.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

(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 amendments to this regulation do not create any revenue for the Kentucky State Penitentiary or other government entities.

(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 amendments to this regulation do not create any revenue for the

Kentucky State Penitentiary or other government entities.

(c) How much will it cost to administer this program for the first year? No new programs were created. The amendments to this regulation impact how the Kentucky State Penitentiary operates, but do not increase costs from what was previously budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky State Penitentiary operates, but are not expected to increase costs from what will be budgeted to the Department of Corrections.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET
Department of Highways
(Amendment)

603 KAR 5:050. Uniform traffic control devices.

RELATES TO: KRS 189.337, 23 C.F.R. 655.601-655.603

STATUTORY AUTHORITY: KRS 189.337(2), 23 C.F.R. 655.601-655.603

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.337(2) requires the Transportation Cabinet, Department of Highways, to promulgate and adopt a manual of standards and specifications for a uniform system of traffic control devices. The Federal Highway Administration in 23 C.F.R. 655.603 recognizes the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) as the national standard for all traffic control devices installed on any street, highway, bicycle trail, or private road open to public travel. This administrative regulation establishes that the MUTCD shall be the uniform system of traffic control devices in Kentucky.

Section 1. Definition. "Private road open to public travel" means a private toll road or road, including any adjacent sidewalk that generally runs parallel to the road, within a shopping center, airport, sports arena, or other similar business or recreation facility that:

(a) Is privately owned, but on which the public is allowed to travel without access restrictions; and

(b) Does not include a road within private gated property, except for a gated toll road, in which access is restricted at all times, a parking area, driving aisle within a parking area, or[~~r~~] a private grade crossing.

Section 2. Traffic Control Devices.[~~(1)~~] The MUTCD published by the Federal Highway Administration shall be the standard for all traffic control devices installed on any street, highway, bicycle trail, or private road open to public travel in Kentucky.[~~(2) The MUTCD shall:~~

~~(a) Provide the standards, guidance, and options for the design and application of traffic control devices; and~~

~~(b) Not be considered a substitute for engineering judgment.~~]

Section 3. Incorporation by Reference. (1) "Manual on Uniform Traffic Control Devices for Streets and Highways", Federal Highway Administration, December, 2009, revised May, 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, Division of Traffic Operations, 200 Mero Street, Third Floor, in Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at the cabinet's Web site at www.transportation.ky.gov.

STEVE WADDLE, State Highway Engineer
MIKE HANCOCK, Secretary
D. ANN DANGELO, Asst. General Counsel

APPROVED BY AGENCY: November 7, 2012

FILED WITH LRC: November 9, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2012 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 2, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation adopts the uniform system of traffic control devices required by the Federal Highway Administration.

(b) The necessity of this administrative regulation: The cabinet is required to adopt standards pursuant to KRS 189.337 and federal law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation adopts a manual of standards and specifications for a uniform system of official traffic control devices for use on all roads and streets as required by KRS 189.337.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation gives notice of the required standards, and provides a means for the public to have access to these standards.

(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 reflects updates in the MUTCD since this regulation was amended in October, 2011. The two new revisions of May, 2012 will be included in this amendment.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the current edition of the Manual on Uniform Traffic Control Devices in order to remain compliant with federal law.

(c) How the amendment conforms to the content of the authorizing statutes: It informs the public that the most current edition of the Manual on Uniform Traffic Control Devices is incorporated by reference in this administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will allow the cabinet to apply and enforce current provisions of the Manual on Uniform Traffic Control Devices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all government entities responsible for maintaining traffic control devices. The administrative regulation will also impact owners of private roads open to public travel.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All entities that work with traffic control devices must conform to the current standards established in the Manual on Uniform Traffic Control Devices.

(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 involved with these amendments. Costs to comply with the new version of the MUTCD are based on the size of the highway network that an agency maintains. The entities are required to meet federal MUTCD standards.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The parties will benefit by being aware of the most current standards required in the latest edition of the MUTCD.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no known costs associated with implementing these amendments.

(a) Initially: None known.

(b) On a continuing basis: None known.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The cabinet has not increased fees and does not anticipate a need for increased fees.

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

(9) TIERING: Is tiering applied? Yes. The signage requirement varies based on the type of right of way, and the amount of usage.

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 Department of Highways and Public Works in all city and county governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189.337 and 23 C.F.R. Part 655.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Costs to comply with the MUTCD are based on the size of the highway network that an entity maintains.

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

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

(c) How much will it cost to administer this program for the first year? No administrative costs are required or expected based on these amendments.

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

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

Revenues (+-)

Expenditures (+-)

Other Explanation: The local government agencies will be able to implement these changes to the Manual as part of their regular road and street maintenance budgets. The agencies are required to meet federal MUTCD standards.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 C.F.R.655.601-603

2. State compliance standards. Kentucky has adopted and been guided by the mandated Manual on Uniform Traffic Control Devices for many years.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

(a) The listing of the type of signs and the placement required on each highway type;

(b) The type and placement of pavement markings required on each highway type; and

(c) Traffic controls to be used in construction, maintenance or utility work zones.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This amended regulation will update the Manual to the most current edition.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

701 KAR 5:110. Use of local monies to reduce unmet technology need.

RELATES TO: KRS 156.670, 157.650, 157.655, 157.660, 157.665, 160.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 (1)(b) requires the Kentucky Board of Education to promulgate administrative regulations governing the acquisition and use of educational equipment for the schools[~~as recommended by the Council for Education Technology~~]. KRS 156.670(1) requires the development of the master plan for education technology to outline Commonwealth activities related to the purchase, development, and use of technology. The master plan requires a district to submit a plan and report which describes its educational initiatives that have technology components and their unmet technology need. KRS 157.655 stipulates that a local public school district may participate in the education technology funding program based on the unmet technology need described in the local district plan and approved by the Kentucky Board of Education[~~state board~~]. Based on review of the unmet technology need, it has been determined that full implementation of the Kentucky Education Technology System (KETS)[~~KETS~~] cannot be funded based solely on offers of assistance from the Education Technology Trust Fund. Therefore, this administrative regulation is promulgated to ensure that all school district technology procurements, in categories for which KETS standards for unmet need have been established, will reduce the unmet technology need regardless of source of funds.

Section 1. Definitions. (1) "Department" means the Kentucky Department of Education.

(2) "District education technology plan" means the plan developed by the local school district to address the unmet technology need of the district.

(3) "Kentucky Education Technology System" or "KETS" means the statewide system set forth in the technology master plan issued by the Kentucky Board of Education and approved by the Legislative Research Commission.

(4) "Master plan" means the long-range plan for the implementation of the Kentucky Education Technology System approved by

the Kentucky Board of Education and the Legislative Research Commission.

(5) "Unmet technology need" means the total cost of technology, meeting or exceeding the criteria established in the master plan, needed to achieve the capabilities outlined in the approved district education technology plan of the local school district.

Section 2. Determination of Unmet Need. A local school district shall determine its unmet technology need as part of the education technology planning process. Unmet technology need shall be audited by the department and subject to the approval of the Kentucky Board of Education as part of the state review and assistance calculation process, as provided by the master plan.

Section 3. Reducing Unmet Need. (1) In categories of unmet technology need, as provided in the KETS Master Plan for Education Technology, a district shall limit procurements to those which will reduce unmet technology need until the district's unmet technology need no longer exists.

(2) To assist a district in selecting technology which will reduce the unmet technology need, the Department of Education shall develop suggested procurement guidelines for equipment, software, and services.

Section 4. Alternative Technology. For technology components for which KETS standards have not been established, a local school district may propose alternative technologies (waivers) in the local district education technology plan, particularly if the technology is proposed to achieve innovation. The Department[~~department~~] shall respond to the waiver within a three (3) week time period. If denied, the local school district may appeal to the Commissioner of Education[~~commissioner~~].

Section 5. Incorporation by Reference. (1) The 2013-2018 KETS Master Plan[~~KETS Master Plan for Education Technology~~], dated November 2012[~~December 2006~~], is hereby incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Office of Knowledge, Information and Data Services[~~Office of Education Technology~~], 15 Fountain Place, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson

APPROVED BY AGENCY: November 15, 2012

FILED WITH LRC: November 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 21, 2012 at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies when KETS standards for unmet need have been established and full implementation of KETS cannot be funded solely on offers of assistance, then any school district technology procurements will reduce the unmet need regardless of the funding source. This regulation also incorporates by reference the KETS Master Plan for Education Technology.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.160, KRS 156.670, KRS 157,655.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides for specifics for the acquisition and use of educational equipment for the schools as required by KRS 156.160; incorporates the master plan as described in KRS 156.670; and stipulates that a local public school district may participate in the education technology funding program based on the unmet technology need described in KRS 157.655.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides for the use of local monies to reduce unmet technology need and incorporates the Master Plan by reference.

(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 the new Education Technology Master Plan dated October 2012 by reference and removes the reference to the Technology Plan dated December 2006. Technology was added to the district education plan emphasizing that planning efforts describe educational initiatives that have technology components and their unmet technology need. The reference to Council for Education Technology was removed.

(b) The necessity of the amendment to this administrative regulation: The KETS Master Plan for Education Technology has been updated and the regulation needs to be amended to reflect the latest version. With the maturity of many technologies, KDE and the school districts are recognizing that education initiatives have technology components and education planning should not only encompass academic initiatives but how they will be technologically enabled.

(c) How the amendment conforms to the content of the authorizing statute: This amendment incorporates the updated KETS Master Plan for Education Technology dated October 2012 as KRS 156.670 requires the plan to be updated.

(d) How the amendment will assist in the effective administration of the statutes: The updated KETS Master Plan for Education Technology establishes the roadmap for technology use and procurement for the school districts for next 6 years.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 school districts and the Kentucky Department of Education.

(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 changes to the activities currently performed to conform to this regulation.

(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): The updated KETS Master Plan for Education Technology establishes the roadmap for technology use and procurement for the school districts for next 6 years.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(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 to implement the regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.160

(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. No additional expenses to school districts or the Kentucky Department of Education.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 3:130. Internal accounting.

RELATES TO: KRS Chapter 45A, 61.410, 66.480, 156.029, 156.076, 156.160, 156.200, 158.290, Chapter 160, 161.540, 161.560, 342.640, 424.260

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 (1) gives the Kentucky Board of Education the management and control of the common schools. KRS 156.200 requires the Kentucky Board of Education to regulate accounting procedures and reports of local school districts. This administrative regulation establishes uniform procedures for the accounting of school activity funds.

Section 1. Definition. "Activity funds" means[:~~(1) Means~~] all school funds including funds derived from fund raising activities sponsored under the auspices of the school[;] and does[~~(2) Does~~] not mean funds raised or received by organizations which do not come under the direct supervision of school authorities.

Section 2. District Responsibilities. A district board of education shall have[: ~~(1) Have~~] the responsibility for administration and control of all activity funds[;] and comply[~~(2) Comply~~] with "Accounting Procedures for Kentucky School Activity Funds".

Section 3. Audits. (1) Activity funds internal accounts shall be audited annually by a certified public accountant.

(2) Audit reports shall be reviewed and accepted by the local board of education, and appropriate action taken.

(3) Recommendations and exceptions listed in the audit shall be reviewed by staff of the Department of Education, and a report shall be made to the local board of education[~~district Board of Education~~].

(4) A copy of the school audit report shall be on file in both the office of the principal and the office of the superintendent of the local school district where it shall be open for public inspection.

Section 4. Incorporation by Reference. (1) "Accounting Procedures for Kentucky School Activity Funds", November 2012[~~August 2007~~], is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division[~~Office~~] of District Support[~~Services~~], 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson

APPROVED BY AGENCY: November 15, 2012

FILED WITH LRC: November 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 21, 2012, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes uniform procedures for the accounting of school activity funds.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to continue the Kentucky Board of Education's authority over accounting procedures and reports of local school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific definitions of "Activity Funds" and incorporates by reference the "Accounting Procedures for Kentucky School Activity Funds" as required by KRS 156.200.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This regulation provides the specifics for the accounting of activity funds and establishes uniform procedures to account for those funds.

(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 updates to the existing "Accounting Procedures for Kentucky School Activity Funds" as incorporated by reference to assist in compliance with KRS 156.200.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the requirements of activity fund accounting within schools to ensure compliance with changes in accounting and auditing guidance as well as updates to other statues impacting school activity funds.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the accounting requirements of the school activity funds.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide specific direction to schools and districts for the implementation of the requirements of the uniform procedures and reports of school activity funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, finance officers, bookkeepers and students of local school districts in Kentucky, and supporting staff in the agency. This also impacts outside certified public accountants performing the audits, and fundraising organizations that are under the auspices of the school.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment will have minimal impact on most school districts as the updated requirements in this amendment reflect the current practices and the current technology in place in most school districts and will ensure consistent and updated practices and procedures in all school districts across the state.

(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: Most school districts will not have to take any actions or will take minimal actions to train school staff on the changes to the regulation which may already be in place in their districts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Most school districts will not have any or will have minimal additional administrative expenses as a result of the proposed amendment because most school districts already have these practices and technology in place in their districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): School revenue generated from fundraising activities will be properly recorded and spent in accordance with the established statute and regulation; there will be tighter controls of activity funds to aid in the prevention of loss of those funds; and there will be greater accountability of outside support/booster organizations to local school districts.

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

(a) Initially: The proposed amendment may result in minimal additional administrative costs.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing state and local funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public K-12 schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, KRS 156.200 and KRS 156.160.

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. Minimal additional administrative expense to school districts.

(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 proposed amendment may require minimal additional administrative costs for the first year.

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28) [~~216B.015(27)~~], 216B.040(2)(a)2a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2012[~~2011~~] Update to the 2010-2012 State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(28)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2012[~~2011~~] Update to the 2010-2012 State Health Plan", November 2012[~~May 2011~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Health Policy, 275 East Main Street, fourth floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.900 KAR 5:020

ERIC FRIEDLANDER, Acting Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 14, 2012

FILED WITH LRC: November 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 2, 2013. 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: Eric Friedlander or Chandra Venettozzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2012 Update to the 2010 – 2012 State Health Plan, revised November, 2012. The 2012 Update to the 2010 – 2012 State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(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(1), 216B.010, 216B.015(28), 216B.040(2)(a)2a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of 216B.010-216B.130 by incorporating by reference the 2012 Update to the 2010 – 2012 State Health Plan, revised November, 2012. The 2012 Update to the 2010 – 2012 State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a. KRS 216B.015(28) states the State Health Plan be prepared triennially and updated annually. This regulation incorporates the 2012 update to the State Health Plan.

(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.040(2)(a)2.a by incorporating by reference the 2012 Update to the 2010-2012 State Health Plan.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates by reference the 2012 Update to the 2010-2012 State Health Plan.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as KRS 216B.015(28) states the State Health Plan be prepared triennially and updated annually. This regulation incorporates the 2012 update to the State Health Plan.

(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 update to the 2010-2012 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the 2012 update to the 2010-2012 State Health Plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects entities wishing to file an application for a Certificate of Need. Approximately 160 entities file an application for a Certificate of Need 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: Entities wishing to submit an application for a Certificate of Need will be subject to the revised criteria set forth in the revised 2012 update to the 2010-2012 State Health Plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): 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 revised criteria set forth in the revised 2012 update to the 2010-2012 State Health Plan so that they make more accurately complete their application for a 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: 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. 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 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2a.

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 revenue in the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

921 KAR 2:055. Hearings and appeals.

RELATES TO: KRS Chapter 13B, 45.237, 205.211, 205.231, 205.237, 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 45 U.S.C. 231-231v

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 42 U.S.C. 602, 8624[~~601-619~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary 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. 42 U.S.C. 602 and 42 U.S.C. 8624 require[~~601 to 619 requires~~] states receiving Temporary Assistance for Needy Families(TANF) and Low Income Home Energy Assistance Program (LIHEAP) grants, respectively, to provide a grievance procedure for[~~TANF~~] participants and outline this procedure in the applicable[~~TANF~~] state plan. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth, and KRS 205.231(5) requires the cabinet to promulgate administrative regulations for the hearing process. This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP), or the State Supplementation Program (SSP).

Section 1. Hearing Information. (1) A participant shall be informed of:

(a) The right to a hearing;[~~:~~]

(b) The procedures for requesting a hearing, as defined in Section 3 of this administrative regulation; and

(c) Who may represent the participant in a hearing as defined in Section 2 of this administrative regulation.

(2) When the participant files an application, the cabinet shall inform the participant of the right to hearing both orally and in writing.

(3) When an action is taken which affects the benefits of the participant, the cabinet shall inform the participant of the right to hearing in writing.

Section 2. Request for a Hearing. (1) An individual shall request a hearing by:

(a) Completing and submitting a PAFS-78, Request for Hearing, Appeal, or Withdrawal;

(b) Submitting a written request; or

(c) Making an oral request.

(2) The hearing request may be:

(a) Submitted to the local Department for Community Based Services office; or

(b) Sent to the Cabinet for Health and Family Services, Division of Administrative Hearings, Families and Children Administrative Hearings Branch, 275 East Main, Frankfort, Kentucky 40621.

(3) The reason for the hearing shall be included in the hearing request.

Section 3. Timeframe for Hearing Request. (1) A written or oral request for a hearing shall be considered timely if received by the cabinet within:

(a) Forty (40) days of the date of the advance notice of adverse action;

(b) Thirty (30) days of the notice of:

1. Denial of an application; or

2. Decrease or discontinuance of an active case; or

(c) The time period the action is pending if the hearing issue is a delay in action.

(2) If a hearing officer determines an appellant meets good cause criteria in accordance with subsection (3) of this section, the appellant may be granted up to an additional thirty (30) days to submit a hearing request.

(3) An appellant may be granted good cause by the cabinet:

(a) For:

1. A delay in requesting a hearing;

2. A delay in requesting a continuation of benefits;

3. Failure to appear for a hearing; or

4. Postponement of a scheduled hearing; and

(b) If the appellant:

1. Was away from home during the entire filing period;

2. Is unable to read or to comprehend the right to request a hearing on an adverse action notice;

3. Moved, resulting in delay in receiving or failure to receive the adverse action notice;

4. Had a household member who was seriously ill; or

5. Was not at fault for the delay of the request, as determined by the hearing officer.

Section 4. Continuation of Assistance Program Benefits. (1) If a hearing is requested, benefits shall remain inactive or reduced pending the issuance of a final order unless the appellant requests a continuation of benefits.

(2) Benefits shall be reinstated to the benefit level that was received prior to the adverse action being taken if the request for a continuation of benefits is received within:

(a) Ten (10) days of the date on the notice of adverse action; or

(b) Twenty (20) days of the date on the notice of adverse action or notice if the reason for delay meets the good cause criteria contained in Section 3(3) of this administrative regulation.

(3) If the program benefit has been reduced or discontinued as a result of a change in law, administrative regulation, or policy of the cabinet, subsection (2) of this section shall not apply.

(4) If the action taken by the agency is upheld, continued[~~,~~] or reinstated benefits shall be:

(a) Considered overpayments as defined in KRS 205.211; and

(b) Collected in accordance with KRS 45.237.

Section 5. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge a hearing request.

(2) In accordance with KRS 13B.050, the notice of the hearing shall contain information regarding the:

(a) Hearing process, including the right to case record review prior to the hearing;

(b) Right to representation;

(c) Availability of free representation by legal aid or assistance from other organizations within the community; and

(d) Time and location of the hearing.

(3) The cabinet may deny or dismiss a hearing request in accordance with 45 C.F.R. 205.10(a)(5)(v).

Section 6. Withdrawal or Abandonment of Request. (1) The appellant may withdraw a hearing request prior to the:

(a) Hearing; or

(b) Final order being issued if the hearing has already been conducted.

(2) The cabinet shall consider a hearing request abandoned if the appellant or authorized representative fails to:

(a) Appear for the scheduled hearing without notifying the cabinet prior to the hearing; and

(b) Establish good cause for failure to appear, in accordance with the criteria specified in Section 3(3) of this administrative regulation, within ten (10) days of the scheduled hearing date.

Section 7. Appellant's Hearing Rights. (1) In addition to the rights described in Section 6 of this administrative regulation, the appellant shall have the right to submit additional information in support of the claim.

(2) The appellant shall have the right to a medical assessment at the expense of the cabinet by a person not associated with the

original action if the hearing:

(a) Involves medical issues; and

(b) The hearing officer considers it necessary.

(3) If a request for a medical assessment at cabinet expense is received and denied by the hearing officer, the denial shall:[;]

(a) Be in writing; and

(b) Specify the reason for the denial.

Section 8. Postponement of a Hearing. (1) An appellant shall be entitled to a postponement of a hearing if the:

(a) Request for the postponement is made prior to the hearing; and

(b) Need for the delay is due to an essential reason beyond the control of the appellant in accordance with good cause criteria contained in Section 3(3) of this administrative regulation.

(2) The hearing officer shall decide if a hearing is postponed.

(3) The postponement of a hearing shall not exceed thirty (30) days from the date of the request for postponement.

Section 9. Conduct of a Hearing. (1) A hearing shall be:

(a) Scheduled by the hearing officer; and

(b) Conducted in accordance with KRS 13B.080 and 13B.090.

(2) A hearing officer shall make an effort to conduct a hearing at a location within the state that is convenient for the appellant and other parties involved.

(3) To secure all pertinent information on the issue, the hearing officer may:

(a) Examine each party or witness who appears; and

(b) If necessary, collect additional evidence from a party.

(4) Parties to a telephonic hearing shall:

(a) Submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the hearing being convened; and

(b) Within the timeframe specified by the hearing officer, mail the hearing officer and opposing party any documents or written materials that:

1. Are introduced as evidence into the hearing record; and

2. Have not been supplied to the opposing party prior to the hearing.

(5) If evidence addressed in subsection (4) of this section is not provided to the hearing officer and the opposing party, the evidence may be excluded from the hearing record.

Section 10. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order which:

(a) Summarizes the facts of the case;

(b) Specifies the:

1. Reasons for the recommended order; and

2. Address to which a party in the hearing may send an exception to the recommended order; and

(c) Identifies the:

1. Findings of fact;

2. Conclusions of law;

3. Supporting evidence; and

4. Applicable state and federal regulations.

(2) A copy of the recommended order shall be sent to the:

(a) Appellant or representative;[~~and~~]

(b) Local Department for Community Based Services office and the office's management; and

(c) Department for Community Based Services' Division of Family Support.

Section 11. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the recommended order, the party may file a written exception with the Commissioner of the Department for Community Based Services or designee.

(2) A written exceptions or rebuttal shall:

(a) Be filed within fifteen (15) days of the date the recommended order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each other party involved in the hearing.

Section 12. Final Order. Unless the issue is remanded to the hearing officer for further action, the commissioner or designee shall issue a final order within forty-five (45) days of receipt of the recommended order.

Section 13. Appeal of the Final Order. (1) A participant or authorized representative may appeal a final order by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3).

(2) A request for appeal of a final order shall be submitted either orally or in writing to the:

(a) Local Department for Community Based Services office; or

(b) Appeal board.

(3) The date a request is received by the cabinet is considered the date the request is filed.

(4) An appeal request shall be considered timely if the request is received within:

(a) Twenty (20) days of the date the final order was mailed; or

(b) Thirty (30) days of the date the final order was mailed if good cause, in accordance Section 3(3) of this administrative regulation, is met.

Section 14. Appellant's Rights Prior to Appeal Board Consideration. (1) An appeal to the appeal board shall be acknowledged in writing to the appellant and authorized representative.

(2) The acknowledgment shall:

(a) Advise the appellant that:

1. A brief may be filed; or

2. New evidence or exhibits may be submitted in accordance with Section 15(1)(b) of this administrative regulation; and

(b) State the date by which the appellant's brief, new evidence, or new exhibits are to be received by the appeal board for consideration[~~tentative date on which the board shall consider the appeal~~].

Section 15. Appeal Board Review. (1) The appeal board shall consider:

(a) The records of the hearing; and

(b) New evidence or exhibits introduced before the appeal board in accordance with subsection (2) or (3)[~~or (4)~~] of this section.

(2) The appeal board shall provide an appellant opportunity to submit new evidence or exhibits available since the hearing.

(3) If an appeal is being considered on the record, the parties may:

(a) Submit written arguments; and

(b) Be permitted to present oral arguments if a party provides justification to the board that the party cannot present new evidence or exhibits available since the hearing in writing. Telecommunications may be utilized for the presentation of oral arguments.[~~(4) New evidence or exhibits shall be accepted by the board after a party to the hearing has been given seven (7) days' notice of the opportunity to:~~

~~(a) Object to the introduction of new evidence or exhibits; or~~

~~(b) Rebut or refute any new evidence or exhibits.~~]

Section 16. The Appeal Board Decision. (1) The decision of the appeal board shall be in accordance with KRS 205.231.

(2) The appeal board shall be allowed to reverse the decision in subsection (1) of this section if the following criteria are met:

(a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and

(b) Within twenty (20) days of the appeal board decision, the appellant, or household member whose incapacity or disability is the issue of the hearing, receives and provides to the appeal board an award letter for benefits based on disability including:

1. Supplemental Security Income pursuant to 42 U.S.C. 1381-1383f;

2. Retirement, Survivors, and Disability Insurance, pursuant to 42 U.S.C. 401-434;

3. Federal Black Lung Benefits pursuant to 30 U.S.C. 901-944;

4. Railroad Retirement Benefits pursuant to 45 U.S.C. 231-231v; or

5. Veterans Administration Benefits based on 100 percent disability pursuant to 38 U.S.C. 1101-1163 or 1501-1525.

Section 17. Payments of Assistance. (1) Payments of assistance shall be made within ten (10) days of the receipt of a final order or a decision of the appeal board and shall include:

(a) The month of application; or

(b) If it is established that the appellant was eligible during the entire period in which assistance was withheld, a month in which incorrect action of the cabinet adversely affected the appellant.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of a final order or a decision of the appeal board.

Section 18. Limitation of Fees. (1) The cabinet shall not be responsible for payment of attorney fees.

(2) Pursuant to KRS 205.237, an attorney representing an appellant shall not charge more than the following amounts for his services:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the appeal board;

(c) $175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court; or

(d) $300 for preparatory work, briefs, and other materials related to an appeal to the Court of Appeals.

(3) The cabinet shall approve the amount of a fee, if the:

(a) Appellant and legal counsel agree to the fee; and

(b) Fee is within the maximums specified in subsection (2) of this section.

(4) Collection of an attorney fee shall:

(a) Be the responsibility of the counsel or agent; and

(b) Not be deducted from the benefits provided to an appellant.

Section 19. Incorporated by Reference. (1) The form, "PAFS-78, Request for Hearing, Appeal, or Withdrawal", edition 03/13[~~4/10~~"], is incorporated by reference.

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

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 13, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2012 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 2, 2013. 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 Dearinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to be followed in conducting administrative hearings and appeals related to the Kentucky Transitional Assistance Program (K-TAP), the Low Income Home Energy Assistance Program (LIHEAP), and the State Supplementation Program (SSP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for conducting hearings and related appeals for public assistance programs' applicants and recipients congruent with governing federal grant requirements.

(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 hearing and appeal processes for public assistance programs congruent with governing federal grant requirements.

(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 hearing and appeal processes for public assistance applicants and recipients congruent with governing federal grant requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by revising the non-discrimination statement required by the U.S. Department of Agriculture, Food and Nutrition Service, Office of Civil Rights on material incorporated by reference. Form PAFS-78, Request for Hearing, Appeal, or Withdrawal, is used by public assistance programs' applicants and recipients, including applicants and recipients of the Supplemental Nutrition Assistance Program (SNAP). The amendment also clarifies the persons to whom a copy of the recommended order is sent and the appellant's rights prior to Appeal Board consideration. The amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with federal program and grant requirements, clarify the persons to whom a copy of the recommended order is sent and the appellant's rights prior to Appeal Board consideration, and ensure compliance with KRS Chapter 13A. The amendment will help the state avoid federally imposed corrective action or penalty.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute through its technical corrections that provide clarity and update language consistent with federal requirements for the programs governed by the administrative regulation.

(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 through its clarification of hearing and appeal processes and updates to language for alignment with federal program and grant requirements.

(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 families and households who apply for, or are receiving, assistance from K-TAP, LIHEAP, and SSP. Material incorporated by reference, form PAFS-78, Request for Hearing, Appeal, or Withdrawal, is also used by applicant and recipients of SNAP benefits. In August 2012, there were 5,172 K-TAP, 371 Kinship Care, and 198 State Supplementation applications taken. During this month, 23,698 K-TAP families, 6,975 Kinship Care families, 410,475 SNAP households, and 3,661 SSP recipients received assistance. LIHEAP served 210,562 households in State Fiscal Year 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 amendment to this administrative regulation will not require any new or additional actions on the part of K-TAP, LIHEAP, and SSP applicants or recipients.

(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 will not create a new or additional cost for the affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The affected entities will benefit from the amendment's clarity in the hearing and appeal processes offered for public assistance programs and revised incorporated material that meets federal requirements for content.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding will be state general funds (i.e., state match and maintenance of effort), federal TANF funds, and federal LIHEAP funds. The funding has been appropriated in the enacted budget.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees nor directly or indirectly increase any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 602, 42 U.S.C. 8624, 45 C.F.R. 205.10

2. State compliance standards. KRS 13B.170, 194A.010, 194A.050, 205.231

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 will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services' Department for Community Based Services and Division of Administrative Hearings are impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.170, 194A.010, 194A.050, 205.231, 42 U.S.C. 602, 42 U.S.C. 8624, and 45 C.F.R. 205.10.

(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? These programs have been operational for numerous years. The amendment to this administrative regulation is technical and conforming in nature. The administrative regulation will not generate new revenue for the state or local government in the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional or new costs are necessary 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 Family Support
(Amendment)

921 KAR 2:060. Delegation of power for oaths and affirmations.

RELATES TO: KRS 205.170(1), [~~7 C.F.R. 273.22(f)(4),~~] 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.170(1), 205.200, 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. KRS 205.200 requires the Cabinet for Health and Family Services to administer the public assistance program in conformity with the Public Assistance Titles of the Social Security Act, its amendments, and other federal acts and regulations, including 42 U.S.C. 601 to 619, and to provide supplemental payments to persons who are aged, blind, or have a disability. This administrative regulation establishes the designation of certain employees by the secretary of the cabinet to administer oaths and affirmations, in conformity with KRS 205.170(1).

Section 1. Specific Worker Designation. The following classifications of employees shall be designated as duly authorized representatives of the Secretary of the Cabinet for Health and Family Services to administer an oath or affirmation to an applicant or recipient:

(1) Family support specialist III;
(2) Case management specialist III;
(3) Program specialist;
(4)[~~A~~] Field services supervisor;
(5)[~~(2) A~~] Service region administrator associate; and
(6)[~~(3) A~~] Service region administrator.

Section 2. Purpose. An oath or affirmation shall be administered by a designated representative to an applicant or recipient to:

(1) Obtain a sworn statement regarding a claim that a check issued through a cabinet program has been:
(a) Lost;
(b) Misplaced; or
(c) Stolen;
(2) Request a replacement check; or
(3) View a check endorsement.

Section 3. Process. (1) A PAFS-60, Affidavit,[~~An affidavit~~] shall

be used if:

(a) A check is reported lost or stolen to request a replacement check within twelve (12)[~~six (6)~~] months of intended receipt; or

(b) A check endorsement is viewed.

(2) If the payee reports nonreceipt, loss, or theft of a check, the payee shall come into the office to complete a PAFS-60[~~an affidavit~~] within four (4) work days of reporting nonreceipt of the check in effort to[~~. This process shall~~] place a stop payment on the check.

(3) If the original check has been cashed, a photocopy of the cashed check shall be forwarded to the local office.

(a) The payee shall view the endorsement; and

(b) If the signature is not that of the payee, the payee shall sign the PAFS-60[~~affidavit~~] stating the:

1.[~~The~~] Signature on the photocopy is not the payee's[~~his~~] signature; and

2. Payee[~~He~~] received no benefit from the cashing of the check.[~~(4) The affidavit shall also be used to request reissuance of the check in question.~~

~~(5) The time limitation that a lost or stolen check may be replaced shall not exceed six (6) months from the date of intended receipt.~~]

Section 4. Incorporation by Reference. (1) The "PAFS-60, Affidavit", edition 3/13,[~~06/02"~~] 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, 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: November 13, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2012 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 2, 2013. 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 Dearinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process and designates certain employees by the secretary of the cabinet to administer oaths and affirmations in conformity with KRS 205.170(1).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish the process for the administration of an oath or affirmation by specific employees of the cabinet in the event a cash benefit check is lost or stolen.

(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 designating specific employees to administer oaths and affirmations and establishing the process to use when a cash benefit check is reported stolen or lost.

(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 through its designation of specific employees to administer oaths and affirmations and its establishment of the process to use when a cash benefit check is reported stolen or lost.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this administrative regulation by updating the nondiscrimination statement on form PAFS-60, Affidavit, to meet the requirements established by the U.S. Department of Agriculture, Food Nutrition Service (FNS), Office of Civil Rights and revising the form to make it more user-friendly for departmental staff. The amendment aligns the time frame in which a replacement check may be requested with the period the check is valid. The amendment adds additional personnel classifications to the list of employees designated to administer oaths and affirmation to address logistical challenges experienced by local departmental offices and their management. Additionally, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure conformity with federal programmatic requirements and avoid federal penalty or sanction, streamline and clarify existing processes regarding the administration of oaths and affirmations for local office staff, address logistical concerns local department offices experience due to the current limitation of personnel classifications allowed to administer oaths and affirmations, and ensure proper drafting and formatting in accordance with KRS Chapter 13A.

(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 by making clarifications and technical corrections to the process of administering oaths and affirmations in accordance with federal programmatic and grant requirements, and by streamlining the process and designating other personnel classifications to administer oaths and affirmation in an effort to address logistical concerns expressed by local departmental offices and their management.

(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 through federally congruent and administratively efficient administration of oaths and affirmations in the event a cash benefit payment is lost or stolen.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to households who are receiving cash assistance from the Kentucky Transitional Assistance Program (K-TAP), Kinship Care, Family Alternative Diversion (FAD), Work Incentive Program (WIN), Kentucky Works Program (KWP) supportive services, State Supplementation Program, and the Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program (E&T). In August 2012, there were 23,698 K-TAP families, 6,975 Kinship Care families, 3,661 State Supplementation recipients, 852 WIN recipients, 179 FAD payments, 6,398 transportation supportive services recipients, 194 supportive services fee payments, and 206 other supportive services payments.

(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 affected entities will have no new or additional actions to take to comply with the amendment to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not impose a new or additional cost to the identified entities.

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

the administrative regulation's conformity with federal programmatic and grant requirements and improved application of the administrative regulation by local office staffs and their management.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(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 state general funds (i.e., state match and maintenance of effort), and federal TANF funds. The funding has been appropriated in the enacted budget.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees nor directly or indirectly increase any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 to 619

2. State compliance standards. KRS 194A.50, 205.170, 205.200

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 will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 205.170, 205.200, 42 U.S.C. 601 to 619.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? These programs have been operational for numerous years. The amendment to this administrative regulation is technical and conforming in nature. The administrative regulation will not generate new revenue for the state or local government in the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional or new costs are necessary 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 Family Support
(Amendment)

921 KAR 3:030. Application process.

RELATES TO: KRS 116.048, 7 C.F.R. 273.2, 273.10, 42 U.S.C. 1973gg-5, 7 U.S.C. 2020(e)(2)(B)(ii), (iii), (iv), 42 U.S.C. 2000d, Pres. EO 13166

STATUTORY AUTHORITY: KRS 116.048(1), 194A.050(1), 7 C.F.R. 271.4, 7 U.S.C. 2020(e)(2)(B), 7 U.S.C. 2011-2029, 42 U.S.C. 1973gg-5

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 U.S.C. 2011 to 2029 and 7 C.F.R. 271.4 authorize the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) and prescribes the manner in which the program shall be implemented. 7 U.S.C. 2020(e)(2)(B) requires the cabinet to develop a uniform application process. KRS 116.048(1) designates the cabinet as a voter registration agency in accordance with 42 U.S.C. 1973gg-5. This administrative regulation establishes the application and the voter registration processes used by the cabinet in the administration of the SNAP.

Section 1. Right to Apply or Reapply. (1) An individual shall have the right to apply or reapply for SNAP benefits on the same day that the household first contacts the Department for Community Based Services (DCBS) office in person during office hours.

(2) The cabinet shall make the application process readily accessible to a household.

(3) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for a person who is:

(a) Deaf; or

(b) Hard of hearing.

(4) In accordance with 42 U.S.C. 2000d and Presidential EO 13166, interpreter services shall be provided for a person who is Limited English Proficient.

(5) An application shall be considered filed if:

(a) A FS-1, Application for SNAP, containing the name, address, and signature of the applicant is received by a DCBS office; or

(b) Application for benefits and another public assistance program is made in accordance with 921 KAR 2:040 and Section 6 of this administrative regulation.

(6) An application shall be processed after the:

(a) Applicant or representative is interviewed;

(b) Required information and verification for the application is provided to the DCBS office; and

(c) Application and related documents are received by the DCBS office, as specified in Section 3(1) of this administrative regulation.

Section 2. Who May Sign an Application. An application for SNAP shall be signed by:

(1) An adult or emancipated child who is a responsible member

of the household; or

(2) The household's authorized representative.

Section 3. Where an Application is Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in any DCBS office.

(2) A concurrent application for Supplemental Security Income (SSI) and SNAP shall be filed in the service area office of the Social Security Administration.

Section 4. Prompt Action on an Application. The cabinet shall provide an eligible household that completes the initial SNAP application process an opportunity to participate as soon as possible. The cabinet shall not provide an opportunity to participate later than:

(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or

(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 5. Expedited Service. The cabinet shall provide expedited services to a household that is eligible in accordance with 7 C.F.R. 273.2(i).

Section 6. Public Assistance Application Process. (1) A household in which every member is applying for Kentucky Transitional Assistance Program (KTAP) shall be allowed to simultaneously apply for SNAP benefits. A single interview shall be conducted for both programs.

(2) Time standards specified in Section 4 of this administrative regulation shall not apply to a public assistance application. A public assistance application shall be governed by the time standards specified in 921 KAR 2:035, Section 4.

(3) A household in which every member receives, or is authorized to receive, SSI shall be considered categorically eligible unless:

(a) The entire household is institutionalized;

(b) A household member is ineligible due to a drug-related felony conviction;

(c) A household member is disqualified due to an intentional program violation specified in 921 KAR 3:010; or

(d) The head of the household is disqualified for failure to comply with the work requirements specified in 921 KAR 3:042.

(4) A household in which any member receives, or is authorized to receive cash, in-kind, or other benefits funded under Temporary Assistance for Needy Families Block Grant (TANF) shall be considered categorically eligible unless:

(a) The entire household is institutionalized;

(b) A household member is ineligible due to a drug-related felony conviction;

(c) A household member is disqualified due to an intentional program violation specified in 921 KAR 3:010; or

(d) The head of household is disqualified for failure to comply with the work requirements specified in 921 KAR 3:042.

(5) If verified by the program or service conferring categorical eligibility status, a categorically eligible household shall not be required to verify the following eligibility factors:

(a) Resources;

(b) Gross and net income;

(c) Social Security number;

(d) Sponsored alien information; and

(e) Residency.

Section 7. Joint SSI and SNAP Application Process. A household in which every member is an applicant or recipient of SSI shall be allowed to simultaneously apply for both SSI and SNAP as specified in Section 3(2) of this administrative regulation.

Section 8. Voter Registration. (1) In accordance with KRS 116.048 and 42 U.S.C. 1973gg-5, a SNAP applicant or recipient shall be provided the opportunity to complete an application to register to vote or update current voter registration if the applicant or recipient is:

(a) Age eighteen (18) or over; and

(b) Not registered to vote or not registered to vote at his current address.

(2) PAFS-706, Voter Registration Rights and Declination, shall be utilized to document a SNAP applicant or recipient's choice to:

(a) Register to vote;

(b) Not register to vote; or

(c) Indicate that they are currently registered to vote.

(3) A voter registration application shall be completed if a SNAP applicant or recipient wants to:

(a) Register to vote; or

(b) Update voter registration to provide a new address.

(4) The voter registration process shall not apply to an individual not included in the assistance application, such as an authorized representative.

(5) All information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.

(6) The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the voter registration applicant.

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

(a) "FS-1, Application for SNAP", edition 3/13[~~2/12~~]; and

(b) "PAFS-706, Voter Registration Rights and Declination", edition 8/10.

(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: November 13, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2012 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 2, 2013. 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 Dearinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application and the voter registration processes used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application standards for SNAP.

(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 an application process for SNAP.

(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 statues by establishing procedures used by the cabinet in the administration of

SNAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will revise material incorporated by reference, FS-1, Application for SNAP, to comply with federal regulations by updating the non-discrimination statement as required by the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), Office of Civil Rights. 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 comply with the federal programmatic requirements and to avoid possibility for federally imposed corrective action or penalty.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the authorizing statutes by implementing the requirements of federal regulation.

(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 through compliance with federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 861,376 individuals in 410,475 households participated in SNAP in Kentucky during August 2012. All SNAP recipients and potential applicants are 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: This amendment will not require any additional or new actions on the part of SNAP applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not have a cost to a SNAP applicant or recipient.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): SNAP applicants and recipients will benefit for this regulatory amendment by having the correct non-discrimination statement on the application form as required by the USDA, FNS, Office of Civil Rights.

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

(a) Initially: This amendment is technical and conforming in nature. Initially, no additional funding is required.

(b) On a continuing basis: On a continuing basis, no additional funding is required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of the funding will be SNAP federal funds and matching state funds. The funding has been appropriated in the enacted budget.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.2, 7 U.S.C. 2011-2029, and 42 U.S.C. 1973gg-10

2. State compliance standards. KRS 116.048, 194A.050

3. Minimum or uniform standards contained in the federal mandate. The provisions of this 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? The amendment to this administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, 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? The Department for Community Based Services will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 116.048, 194A.050, 7 C.F.R. 271.4, 273.2, 7 U.S.C. 2011-2029, 42 U.S.C. 1973gg-10

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 program has been operational for numerous years. The amendment to this administrative regulation is technical and conforming in nature. The administrative regulation will not generate new revenue for the state or local government in the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional or new costs are necessary 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 Family Support
(Amendment)

921 KAR 3:042. Supplemental Nutritional Assistance Program[~~Food Stamp~~] Employment and Training Program.

RELATES TO: 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d)[~~, Pub.L. 110-246~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 273.7

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services is required by 7 C.F.R. 273.7 to administer a Supplemental Nutritional Assistance Program (SNAP)[~~Food Stamp~~] Employment and Training Program. 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. This administrative regulation establishes technical eligibility requirements used by the cabinet in the administration of the SNAP[~~Food Stamp~~] Employment and Training Program (E&T).

Section 1. Definitions. (1) "Exempt" means excused by the agency from participation in the E&T.

(2) "Vocational Educational Skills Training" or "VEST" means a program in which a participant receives training in order to meet a work requirement.

(3) "Work Experience Program" or "WEP" means a program in which a participant receives work experience in order to meet a work requirement.

Section 2. Work Registration. (1) Unless exempt from work requirements as specified in subsection (4) of this section, a household member shall register for work:

(a) At the time of initial application for SNAP[~~food stamps~~]; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by the:

(a) Member required to register; or

(b) Person making application for the household.

(3) Unless otherwise exempt, a household member excluded from the SNAP[~~food stamp~~] case shall register for work during periods of disqualification. An excluded person may be an:

(a) Ineligible alien; or

(b) Individual disqualified for:

1. Refusing to provide or apply for a Social Security number; or

2. An intentional program violation.

(4) An individual meeting the criteria of 7 C.F.R. 273.7(b)(1) shall be exempt from work registration requirements.

(5) A household member who loses exemption status due to a change in circumstances shall register for work in accordance e with 7 C.F.R. 273.7(b)(2).

(6) After registering for work, a nonexempt household member shall:

(a) Respond to a cabinet request for additional information regarding employment status or availability for work;

(b) In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona fide offer of suitable employment as specified in 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or

(c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program, if assigned by the cabinet.

(7) A household member making a joint application for SSI and SNAP[~~food stamps~~] in accordance with 921 KAR 3:035, shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6).

(8) The E&T worker shall explain to the SNAP[~~food stamp~~] applicant the:

(a) Work requirements for each nonexempt household member;

(b) Rights and responsibilities of the work-registered household members; and

(c) Consequences of failing to comply.

Section 3. E&T Participation. (1) An individual subject to the work requirement of 921 KAR 3:025, Section 3(8) shall participate in the E&T Program.

(2) An E&T participant shall:

(a) Attend and complete an initial assessment interview;

(b) Be placed in:

1. VEST; or

2. WEP; and

(c) Complete and return to the cabinet a FSET-108, Job Search Contact Report, or a FSET-145, Employment and Training Program Activity Report, in order to verify participation.

(3) Payment for transportation, up to twenty-five (25) dollars per month, shall be provided to an individual participating in the E&T program if the individual:

(a) Incurs or plans to incur a transportation expense in order to participate; and

(b) Completes and returns to the cabinet a FSET-108 or a FSET-145 stating the anticipated need.

Section 4. Components. (1) A county offering the E&T Program shall offer the following services and activities:

(a) The VEST Program consisting of:

1. Vocational school; or

2. On-the-job training; and

(b) The WEP Program consisting of:

1. Job search; and

2. Work placement.

(2) An individual participating in VEST shall:

(a) Attend training courses for at least twenty (20) hours per week; and

(b) Participate in the WEP component until a VEST placement is available.

(3) An individual participating in WEP shall:

(a) Complete an initial assessment and develop an employability plan;

(b) Participate in the initial thirty (30) days of job search;

(c) Complete and file with the cabinet the FSET-108[~~,~~];

(d) Provide written verification by the WEP provider of E&T Program activities to the cabinet; and

(e) Satisfy the work requirement, in accordance with 921 KAR 3:025, Section 3(8), by:

1. Accepting the offer of a work site placement; and

2. Working at the assigned work site placement for the minimum monthly number of hours required by subsection (4) or (5) of this section.

(4) The minimum number of hours that a WEP participant shall perform each month to satisfy the work requirement of 921 KAR 3:025, Section 3(8), shall be determined by the participant's monthly SNAP[food stamp] allotment divided by the current federal minimum wage.

(5) If the SNAP[~~food stamp~~] household's active members include more than one (1) individual who wants to satisfy the work requirement of 921 KAR 3:025, Section 3(8), through WEP, the minimum monthly number of work hours that each individual is required to perform shall be determined by dividing the:

(a) SNAP[~~Food stamp~~] allotment by the number of individuals who are subject to the work requirement; and

(b) Individual pro rata share of the SNAP[~~food stamp~~] allotment by the current federal minimum wage.

Section 5. Conciliation. (1) If a participant fails to comply with the E&T Program:

(a) The participant shall be mailed a FSET-102, Conciliation Contact and Request for Information form; and

(b) A conciliation period shall be initiated.

(2) The conciliation period shall be used to:

(a) Determine the reason for the noncompliance; and

(b) Allow the participant the opportunity to resolve the problem in order to continue participation.

(3) Conciliation shall last for fifteen (15) days, during which time the E&T worker shall:

(a) Determine if the participant demonstrates good cause for noncompliance;

(b) Encourage the participant to resume an E&T Program activity; or

(c) Recommend disqualification for failure to comply with program requirements, if the worker determines that there was no good cause for the participant's failure to comply.

(4) If the participant resumes the E&T Program activity, a disqualification shall not be imposed.

(5) If conciliation is unsuccessful and the participant fails or refuses to demonstrate good cause, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) A determination of good cause shall be undertaken if a:

(a) Work registrant has failed to comply with:

1. Work registration requirements as established in Section 2 of this administrative regulation; or

2. E&T requirements as established in Section 3 of this administrative regulation; or

(b) Household member has, as described in Section 9 of this administrative regulation, voluntarily:

1. Quit a job; or

2. Reduced his work effort.

(2) In accordance with 7 C.F.R. 273.7(i)(2), good cause shall be granted for circumstances beyond the control of the individual, such as:

(a) Illness of the individual;

(b) Illness of another household member requiring the presence of the individual;

(c) A household emergency;

(d) Unavailability of transportation; and

(e) Lack of adequate care for a child of age six (6) to twelve (12) for whom the individual is responsible.

(3) Good cause for leaving employment shall be granted if:

(a) A circumstance specified in subsection (2) of this section exists;

(b) The employment became unsuitable, in accordance with 7 C.F.R. 273.7(h); or

(c) A circumstance specified in 7 C.F.R. 273.7(i)(3) exists.

Section 7. Disqualification. (1) A mandatory participant shall be disqualified from the receipt of SNAP[~~food stamp~~] benefits if the participant:

(a) Fails to comply with the work registration or E&T program requirements; or

(b) Is determined to have voluntarily and without good cause quit a job or reduced the work effort, as established in Section 8 of this administrative regulation.

(2) An individual disqualified from participation in SNAP[~~the Food Stamp Program~~] shall be ineligible to receive SNAP[~~food stamp~~] benefits until the latter of the:

(a) Date the individual complies; or

(b) Lapse of the following time periods:

1. Two (2) months for the first violation;

2. Four (4) months for the second violation; or

3. Six (6) months for the third or a subsequent violation.

(3) Ineligibility shall continue until the ineligible member:

(a) Becomes exempt from the work registration; or

(b)1. Serves the disqualification period specified in subsection (2) of this section; and

2. Complies with the requirements of:

a. Work registration; or

b. The Employment and Training Program.

(4) A disqualified household member who joins a new household shall:

(a) Remain ineligible for the remainder of the disqualification period specified in subsection (2) of this section;

(b) Have income and resources counted with the income and resources of the new household; and

(c) Not be included in the household size if determining the SNAP[~~food stamp~~] allotment.

Section 8. Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Within thirty (30) days prior to application for SNAP[~~food stamps~~] or any time after application, an individual shall not be eligible to participate in SNAP[~~the Food Stamp Program~~] if the individual voluntarily and without good cause:

(a) Quits a job:

1. Of thirty (30) hours or more per week; and

2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or

(b) Reduces his work effort to less than thirty (30) hours per week, and after the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.

(2) A disqualification period established in Section 7 of this administrative regulation shall be imposed.

Section 9. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Eligibility and participation may be reestablished by:

(a) Securing new employment with salary or hours comparable to the job quit;

(b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification; or

(c) Serving the minimum period of disqualification imposed pursuant to Section 7(2)(b) of this administrative regulation.

(2) If the individual applies again and is determined to be eligible, an individual may reestablish participation in SNAP[~~the Food Stamp Program~~].

(3) If an individual becomes exempt from work registration, the disqualification period shall end and the individual shall be eligible to apply to participate in SNAP[~~the Food Stamp Program~~].

Section 10. Hearing Process. If aggrieved by an action that affects participation, a SNAP[~~food stamp~~] participant may request a hearing in accordance with 921 KAR 3:070.

Section 11. Reimbursement. An individual shall complete and file with the cabinet a written request to have a reimbursement check for employment or training replaced after loss or theft.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "FSET-102, Conciliation Contact and Request for Information", edition 3/13[~~4/09~~];

(b) "FSET-108, Job Search Contact Report", edition 3/13[~~4/09~~]; and

(c) "FSET-145, Employment and Training Program Activity Report", edition 3/13.[~~4/09~~]

(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: November 13, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2012 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2012 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 2, 2013. 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 Dearinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes technical eligibility requirements used by the cabinet in the administration of the Supplemental Nutritional Assistance Program (SNAP) Employment and Training Program (E&T).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards of technical eligibility for the SNAP Employment and Training Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by ensuring the cabinet upholds its responsibility under 7 C.F.R. 273.7 to design and operate SNAP E&T.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-

trative regulation currently assists in the effective administration of the statutes for the SNAP E&T by establishing the technical eligibility requirements in accordance with 7 C.F.R. 273.7.

(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 the administrative regulation will update forms incorporated by reference: FSET-102, Conciliation Contact and Request for Information; FSET-108, Job Search Contact Report; and FSET-145, Employment and Training Program Activity Report. The amendment will update the non-discrimination statement on the forms as instructed by the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), Office of Civil Rights. In addition, the amendment changes the name of the program from the former Food Stamp Program (FSP) to the Supplemental Nutrition Assistance Program (SNAP) in accordance with Public Law 110-246, The Food, Conservation and Energy Act of 2008. 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 comply with federal programmatic requirements and to avoid possibility for federally imposed corrective action or penalty.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing requirements established by 7 C.F.R. 273.7.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statues by its inclusion of the updated program name and the correct nondiscrimination statement on incorporated materials in accordance with federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will affect Kentucky households who are applying for or are receiving SNAP benefits. As of August 2012, there were 861,376 individuals comprising 410,475 households receiving SNAP benefits. At this time, no individuals or families are participating in the E&T due to the state's high unemployment rate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional or new actions on the part of SNAP E&T participants or applicants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the administrative regulation nor the amendment involves a cost to SNAP E&T applicants or participants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): SNAP E&T participants will benefit by the consistency between the state and federal programs' names and the correct nondiscrimination statement on program forms.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature. No additional funding is initially required.

(b) On a continuing basis: No additional funding is needed 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 SNAP E&T receives an annual grant from the USDA, Food and Nutrition Service to cover 100% of its operational costs. The transportation reimbursement to support participation in SNAP E&T is 50% federally funded and 50% state funded. Funding has been appropriated in the enacted budget.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 273.7, 7 U.S.C. 2015(d)

2. State compliance standards. KRS 194A.050

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 273.7

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 will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 7 C.F.R. 273.7, 7 U.S.C. 2015(d), KRS 194A.050

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This program has been operational for numerous years. The amendment to this administrative regulation is technical and conforming in nature. The administrative regulation will not generate new revenue for the state or local government in the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional or new costs are necessary 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 Family Support
(Amendment)

921 KAR 3:050. Claims and additional administrative provisions.

RELATES TO: 7 C.F.R. 272.1, 272.5, 272.6, 273.16, 273.17,

273.18, 26 C.F.R. 301.6402-6

STATUTORY AUTHORITY: KRS 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.18

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. 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. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP)[~~Food Stamp Program~~]. 7 C.F.R. 273.18 requires the agency administering SNAP[~~the Food Stamp Program~~] to develop a process to establish and collect claims. This administrative regulation establishes the criteria for recipient claims, collections provisions, and additional provisions used by the cabinet in the administration of SNAP[~~the Food Stamp Program~~].

Section 1. Responsibility for a Claim. The following individuals shall be responsible for paying a recipient claim as defined in 921 KAR 3:010:

(1) An individual who was an adult member of the household during the time period when the overissuance or trafficking occurred;

(2) A sponsor of an alien household member if the sponsor is at fault; or

(3) A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overissuance or trafficking.

Section 2. Claim Category. (1) As specified in 921 KAR 3:010, a recipient claim shall be classified as an:

(a) Inadvertent household error (IHE);

(b) Agency error (AE); or

(c) Intentional program violation (IPV).

(2) Until fraud is substantiated, an IPV claim shall be established as an IHE with a Suspected Intentional Program Violation (SIPV), indicator.

Section 3. Acting on a Change. (1) A claim shall be established if a household:

(a) Fails to report a change in circumstance in accordance with the timeframes specified in 921 KAR 3:035; or

(b) Reports a change within the required timeframe, but the cabinet fails to act on the change within ten (10) days of the date the change is reported.

(2) The first month of overissuance, as defined in 921 KAR 3:010, shall:

(a) Be the first month that the change would have been effective had it been timely:

1. Reported by the household; or

2. Acted upon by the cabinet; and

(b) Not exceed two (2) months from the month the change in circumstance occurred.

Section 4. Calculating the Amount of a Recipient Claim. (1) In accordance with 7 C.F.R. 273.18(c), unless a claim is related to trafficking, the cabinet shall:

(a) Calculate:

1. An IHE or AE claim back to twelve (12) months prior to when the cabinet became aware of the overissuance, unless an IHE has an SIPV indicator; and

2. An IPV claim or an IHE claim with a SIPV indicator back to the month the fraudulent act first occurred, but not more than six (6) years prior to when the cabinet became aware of the overissuance;

(b) Determine the correct amount of SNAP[~~food stamp~~] benefits for each month that a household received an overissuance;

(c) Not apply the earned income deduction to the portion of earned income that a household failed to report in a timely manner, as specified in Section 3 of this administrative regulation, if:

1. The claim is classified as an IPV or IHE; and

2. The IHE or IPV is the basis for the recipient claim;

(d) Subtract the correct amount of SNAP[~~food stamp~~] benefits from the benefits actually received and the difference shall be the amount of the overissuance; and

(e) Deduct any SNAP[~~food stamp~~] benefits that are designated to be expunged from a household's EBT account from the amount of overissuance:

1. When the recipient claim is initially calculated; and

2. At each subsequent expungement until the balance of the claim is paid in full.

(2) If a claim is related to trafficking, the cabinet shall calculate the value of the trafficked SNAP[~~food stamp~~] benefits as determined by:

(a) An individual's admission;

(b) Adjudication; or

(c) The documentation that forms the basis for the trafficking determination.

(3) The amount of a claim may differ from a calculation obtained through the methods outlined in subsections (1) and (2) of this section if a different amount is ordered by:

(a) An administrative hearing officer or agency head in accordance with: 921 KAR 3:060 or 921 KAR 3:070; or

(b) A court.

(4) In accordance with 7 C.F.R. 273.18(e)(2), the cabinet shall not establish a recipient claim if the claim referral is $125 or less, unless the:

(a) Household is currently participating in SNAP[~~the Food Stamp Program~~]; or

(b) Recipient claim was established or discovered through a quality control review.

Section 5. KCD-1. (1) A KCD-1, General Claims Notice shall serve many purposes in the administration of claims collections, including the use as:

(a) An appointment notice;

(b) A demand letter;

(c) Notification of benefit reduction;

(d) A past due notice;

(e) A repayment agreement;

(f) A claim adjustment notice;

(g) A claim termination notice;

(h) A payment receipt;

(i) Notice of a suspended claim;

(j) Notice of a claim being paid in full; or

(k) Notification that a delinquent claim shall be sent to the U.S. Department of Treasury for collection.

(2) The language on the KCD-1 shall differ according to the purpose of the notice as described in subsection (1) of this section.

Section 6. Notification of a Claim. (1) A household with a suspected claim shall be mailed a KCD-1 notifying the household of an appointment to:

(a) Discuss the potential claim;

(b) Determine the classification of the claim, as specified in Section 2 of this administrative regulation; and

(c) Offer the recipient an opportunity to waive the administrative disqualification hearing if the claim is suspected to be an IPV.

(2) If a household requests to reschedule the appointment within ten (10) days of the date of the notice, the appointment shall be rescheduled.

(3) The cabinet shall determine the classification and the amount of the recipient claim based on the information that is available to the cabinet if the household:

(a) Fails to attend the appointment to discuss the potential claim; and

(b) Does not contact the cabinet to reschedule the appointment.

(4) When the cabinet determines the amount of a recipient claim, in accordance with Section 4 of this administrative regulation, collection shall be initiated and a KCD-1 shall be mailed to notify the household of the claim:

(a) Amount;

(b) Time period;

(c) Reason; and

(d) Category, as specified in Section 2 of this administrative regulation.

(5) The household shall return the KCD-1 within ten (10) days of receipt if the household chooses to:

(a) Initiate a repayment agreement; or

(b) Request a hearing on the claim.

Section 7. Collection Methods. (1) Benefit reduction.

(a) A household that is participating in SNAP[~~the Food Stamp Program~~] shall have payments on the claim made by reducing its monthly SNAP[~~food stamp~~] benefits through benefit reduction by the following amount:

1. For an IPV claim, the amount reduced shall be the greater of twenty (20) dollars per month or twenty (20) percent of the household's monthly benefits or entitlement, unless the household agrees to a higher amount; or

2. For an IHE or AE claim, the amount reduced shall be the greater of ten (10) dollars per month or ten (10) percent of the household's monthly benefits, unless the household agrees to a higher amount.

(b) The cabinet shall not use additional collection methods against individuals in a household that is already having its benefits reduced unless the:

1. Additional payment is voluntary; or

2. Source of the payment is irregular and unexpected such as a federal or state tax refund or lottery winnings offset.

(2) A household may pay its claim using SNAP[~~food stamp~~] benefits from its EBT account if the household gives the cabinet permission:

(a) By completing and returning a KCD-1 or other written statement requesting this option; or

(b) Through an oral request for a one (1) time reduction and the cabinet provides the household with a receipt for the transaction within ten (10) days.

(3) If the cabinet becomes aware of expunged SNAP[~~food stamp~~] EBT benefits, the claim balance shall be reduced by an amount equal to the expunged benefits.

(4) During the claim establishment and collection process, the cabinet shall:

(a) Deduct the amount of an outstanding recipient claim from SNAP[~~food stamp~~] benefits that may be owed to a household; and

(b) Send the household a KCD-1 as notification of the adjustment.

(5) A lump sum payment on a recipient claim:

(a) Shall be accepted by the cabinet; and

(b) May be a full or partial payment.

(6) If a household is not participating in SNAP[~~the Food Stamp Program~~], the cabinet shall:

(a) Negotiate a repayment agreement, either orally or in writing, which includes a repayment schedule; and

(b) Employ additional collection methods if the claim becomes delinquent through the household's failure to submit a payment in accordance with the negotiated repayment agreement.

(7) In accordance with 7 C.F.R. 273.18(g), the cabinet may employ other collection methods to collect a recipient claim, such as:

(a) Referral to a public or private sector collection agency;

(b) Lottery offsets;

(c) Wage garnishment;

(d) The intercept of unemployment compensation benefits;

(e) State income tax refund intercept; or

(f) The intercept of any eligible federal payment owed the debtor through the Treasury Offset Program (TOP).

(8) The cabinet shall:

(a) Refer a recipient claim that is delinquent for 180 or more days to TOP, unless the debtor is a member of a participating household that is undergoing benefit reduction to collect a recipient claim; and

(b) Remove a recipient claim from TOP if the:

1. FNS or U.S. Department of the Treasury instructs the cabinet to withdraw a recipient claim;

2. Cabinet discovers that the debtor:

a. Is a member of a SNAP[~~food stamp~~] household undergoing benefit reduction; or

b. Has made an arrangement to resume payments; or

3. Claim:

a. Has been paid off;

b. Was disposed of through a hearing, termination, or compromise; or

c. Was referred to TOP in error.

Section 8. Delinquent Recipient Claims. (1) In accordance with 7 C.F.R. 273.18(e)(5), a recipient claim shall be considered delinquent if:

(a) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or

(b) A payment arrangement has been established and a scheduled payment has not been made by the due date.

(2) The date of delinquency for a claim shall be the due date on the:

(a) Initial written notification if the claim meets the criteria of subsection (1)(a) of this section; or

(b) Missed installment payment if the claim meets the criteria of subsection (1)(b) of this section.

(3) Pursuant to 7 C.F.R. 273.18(e)(5)(ii), the claim shall remain delinquent until:

(a) Payment is received in full;

(b) Benefit reduction, as described in Section 7 of this administrative regulation, is implemented; or

(c) A satisfactory payment agreement is negotiated for a claim meeting the criteria of subsection (1)(a) of this section.

(4) A claim shall not be considered delinquent if:

(a) Another claim for the same household is currently being paid either through an installment agreement or benefit reduction; and

(b) The cabinet expects to begin collection on the claim once the prior claim is settled.

(5) If the cabinet is unable to determine delinquency status because claim collection is coordinated through the court system, a claim shall not be subject to the requirements for delinquent debts.

(6) A claim awaiting a fair hearing decision shall not be considered delinquent.

(7) If a hearing official determines that a claim does, in fact, exist against the household, the cabinet shall:

(a) Renotify the household of the claim; and

(b) Base delinquency on the due date of the subsequent notice.

(8) If a hearing official determines that a claim does not exist, the cabinet shall:

(a) Dispose of the recipient claim in accordance with Section 9(2) of this administrative regulation; and

(b) Send a KCD-1 to notify the household of the terminated claim.

Section 9. Compromising, Terminating, and Writing-off Claims. (1) Except for a recipient claim that is established by a court of the appropriate jurisdiction, the cabinet may compromise a claim or a portion of a claim if:

(a) A request for compromise is received from the household; and

(b) In accordance with 7 C.F.R. 273.18(e)(7), the cabinet can make a reasonable determination that the household will be unable to pay off the claim within three (3) years.

(2) In accordance with 7 C.F.R. 273.18(e)(8), a claim shall be terminated and written off if:

(a) The claim:

1. Is invalid, unless it is appropriate to pursue the overissuance as a different type of claim;

2. Balance is twenty-five (25) dollars or less and the claim has been delinquent for ninety (90) days or more, unless other claims exist against the household resulting in an aggregate claim total of greater than twenty-five (25) dollars; or

3. Has been delinquent for at least three (3) years and, in accordance with 7 C.F.R. 273.18(n), cannot be pursued through TOP;

(b) All adult household members, as specified in Section 1(1) of this administrative regulation, die; or

(c) The cabinet is unable to locate the household.

Section 10. Restoration of Benefits. (1) Benefits shall be restored to a household if the household has lost benefits:

(a) Due to an administrative error; or

(b) By an administrative disqualification for an IPV that is subsequently reversed.

(2) Benefits shall be restored for a period of not more than twelve (12) months from the date:

(a) The agency receives a request for restoration; or

(b) A final order is implemented, if no request for restoration is received.

(3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and what the household actually received.

(4) Benefits to be restored shall be used to offset any unpaid or suspended claim that the household has.

Section 11. Disclosure of Information. The disclosure or use of information regarding SNAP[~~Food Stamp Program~~] participants shall be restricted to an individual who meets the criteria specified in 7 C.F.R. 272.1(c).

Section 12. Retention of Records. (1) In accordance with 7 C.F.R. 272.1(f), the cabinet shall retain program records:

(a) In an orderly fashion, for audit and review purposes; and

(b) Except for records specified in subsection (2) of this section, for a period of three (3) years from the:

1. Month of origin of each record; or

2. Date of fiscal or administrative closure for fiscal records and accountable documents, such as claims.

(2) The cabinet shall retain records on IPV disqualifications and work violations indefinitely.

Section 13.Civil Rights Compliance. In accordance with 7 C.F.R. 272.6, the cabinet shall not discriminate in any aspect of program administration on the basis of age, race, color, sex, disability, religion, political beliefs, or national origin.

Section 14.Incorporation by Reference. (1) "KCD-1, General Claims Notice", edition 3/13[~~4/09"~~], is incorporated by reference.

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

TERESA C. JAMES, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 13, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2012 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 2, 2013. 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 Dearinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for recipient claims, collection provisions, and additional provisions used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for establishing and collecting SNAP claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by ensuring the cabinet upholds its responsibility to develop a uniform process to establish and collect SNAP claims.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of the criteria for recipient claims, collection provisions, and additional provisions used by the cabinet in the administration of SNAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will revise form KCD-1 General Claims Notice, which is incorporated by reference, to update the non-discrimination statement as instructed by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), Office of Civil Rights. In addition, the amendment changes the name of the program from the former Food Stamp Program (FSP) to the Supplemental Nutrition Assistance Program (SNAP) in accordance with Public Law 110-246, The Food, Conservation and Energy Act of 2008. 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 comply with federal programmatic requirements and to avoid possibility for federally imposed corrective action or penalty.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the authorizing statutes by fulfilling and complying with programmatic requirements in SNAP.

(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 providing the correct nondiscrimination statement on the form incorporated by reference and aligning the program name in the administrative regulation with the newer federal program name.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will affect individuals and households who are applying for and participating in SNAP. As of August 2012, there were 861,376 individuals comprising 410,475 households receiving SNAP benefits in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require any new or additional actions on the part of SNAP applicants or recipients.

(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 involves no new or additional cost to SNAP applicants or recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): SNAP applicants and recipients will benefit by the consistency between the state and federal programs' names and the correct nondiscrimination statement on program forms.

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

(a) Initially: The amendment to this administrative regulation is

technical and conforming in nature. No additional funding is initially required.

(b) On a continuing basis: No additional funding is required on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded through the United States Department of Agriculture. Program administrative costs are funded (50% federal and 50% state). Funding has been appropriated in the enacted budget.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7C.F.R. 271.4, 7 C.F.R. 273.18

2. State compliance standards. KRS 194A.010, KRS 194A.050

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.18

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 will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 7 C.F.R. 271.4, 7 C.F.R. 273.18, KRS 194.010, KRS 194.050

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This program has been operational for numerous years. The amendment to this administrative regulation is technical and conforming in nature. The administrative regulation will not generate new revenue for the state or local government in the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional or new costs are necessary 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 Family Support
(Amendment)

921 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: 7 C.F.R. 273.15, 273.17, 7 U.S.C. 2015

STATUTORY AUTHORITY: KRS Chapter 13B, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.16

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. 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. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP)[~~Food Stamp Program~~]. 7 C.F.R. 273.16 requires the agency administering SNAP[~~the Food Stamp Program~~] to provide a hearing process for individuals accused of intentionally violating a SNAP[~~Food Stamp Program~~] regulation and to implement penalties and disqualifications for such violations. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth. This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV)[~~(IVP)~~] has occurred and the penalties that shall be applied for an IPV.

Section 1. Administrative Disqualification Hearings. (1) Unless a different procedure is specified in this administrative regulation, an administrative disqualification hearing shall:

(a) Be conducted in accordance with 921 KAR 3:070 and KRS Chapter 13B; and

(b) Include:

1. The issuance of a recommended order;

2. Procedures for written exceptions; and

3. The issuance of a final order.

(2) The cabinet shall retain:

(a) The official record of an administrative disqualification hearing until all appeals have been exhausted; and

(b) A case record with an IPV disqualification indefinitely.

Section 2. Intentional Program Violations. (1) If the cabinet suspects that an individual committed an IPV, as defined in 921 KAR 3:010, the cabinet shall:

(a) Initiate an administrative disqualification hearing; or

(b) If warranted by the facts of the case, refer the suspected IPV claim to the Office of the Inspector General (OIG) for investigation or referral for prosecution.

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.

(3) If the OIG determines that the IPV does not warrant investigation or referral for prosecution, the cabinet shall initiate an administrative disqualification hearing as specified in this administrative regulation.

Section 3. Notification. (1) Form FS-80, Notice of SNAP Suspected Intentional Program Violation[~~Notice of Suspected Intentional Food Stamp Program Violation~~], shall serve as the notification to a household of the:

(a) Cabinet's suspicion that an IPV has been committed;

(b) Amount and period of the overpayment for the suspected IPV; and

(c) Household's right to an administrative disqualification hearing.

(2) The cabinet shall provide an individual suspected of an IPV a Form FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing, which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an IPV was committed.

(3) If the household does not return the FS-80 Supplement A, the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(e)(3).

(4) In accordance with KRS 13B.050, the administrative disqualification hearing notice shall be sent:

(a) By certified mail;

(b) To the addressee only; and

(c) With a return receipt requested.

(5) The administrative disqualification hearing notice shall provide information as specified in 7 C.F.R. 273.16(e)(3)(iii).

(6) In accordance with 7 C.F.R. 273.16(e)(2)(iii), the hearing officer shall advise the household member or representative that they may refuse to answer questions during the hearing.

(7) The cabinet shall provide a household notice regarding the IPV determination in accordance with 7 C.F.R. 273.16(e)(9) and KRS 13B.120.

Section 4. Timeframes. (1) Within the ninety (90) day timeframe specified in 7 C.F.R. 273.16(e)(2)(iv), the cabinet shall:

(a) Conduct an administrative disqualification hearing; and

(b) Issue a final order pursuant to the provisions established in 921 KAR 3:070, Section 16.

(2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may be postponed:

(a) One (1) time; and

(b) For no more than thirty (30) days.

(3) If a hearing is postponed, the time limit specified in subsection (1) of this section shall be extended for as many days as the hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualification hearing shall be conducted in accordance with 7 C.F.R. 273.16(e)(4).

(2) If a household representative does not appear for the administrative disqualification hearing, the hearing officer shall review the case file to determine if the hearing shall:

(a) Proceed without household representation, because the return receipt from the hearing notice verified the notice was received by the individual; or

(b) Not be conducted, because the hearing notice or return receipt is annotated as unclaimed or undeliverable.

(3) In accordance with 7 C.F.R. 273.16(e)(4), the cabinet shall conduct a new hearing if the:

(a) Household was not represented at the hearing;

(b) Individual was determined to have committed an IPV; and

(c) Hearing officer later determines the household had good cause, in accordance with 921 KAR 3:070, Section 8(2), for not appearing.

Section 6. Benefits and Participation. (1) In accordance with 7 C.F.R. 273.16(e)(5), the participation of a household suspected of an IPV shall not be affected by the suspected IPV until a disqualification is implemented based on the:

(a) IPV being substantiated by the final order or a court of appropriate jurisdiction;

(b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-80, Supplement A; or

(c) Individual completing, signing, and returning the form FS-111, Deferred Adjudication Disqualification Consent Agreement, pursuant to Section 7 of this administrative regulation.

(2) If the cabinet's determination of an IPV is later reversed, the cabinet shall:

(a) Reinstate the individual, if eligible; and

(b) In accordance with 7 C.F.R. 273.17, restore benefits:

1. That were lost as a result of the disqualification; and

2. For no more than twelve (12) months.

Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111, Deferred Adjudication Disqualification Consent Agreement, in a case of deferred adjudication pursuant to 7 C.F.R. 273.16(h).

(2) In accordance with 7 C.F.R. 273.16(h), the cabinet shall notify an individual signing a FS-111 of the:

(a) Consequences of consenting to disqualification;

(b) Disqualification; and

(c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in SNAP[~~the Food Stamp Program~~], if the individual has:

(a) Committed an IPV, as determined by:

1. An administrative disqualification hearing: or

2. A court; or

(b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.

(2) The time periods for IPV disqualifications shall be implemented in accordance with 7 C.F.R. 273.16(b).

(3) In accordance with 7 C.F.R. 273.16(b)(11), the cabinet shall only disqualify the individual who meets the criteria specified in subsection (1) of this section, not the entire household.

(4) In accordance with 7 C.F.R. 273.16(b)(12), the cabinet shall hold the entire household responsible for making restitution on an overpayment, not just the disqualified individual.

(5) The cabinet shall inform the household in writing of the disqualification penalties for committing an IPV each time the household applies for benefits.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(e)(8)(ii):

(1) Further administrative appeal procedures shall not exist after an:

(a) Administrative disqualification hearing determines that an IPV was committed; or

(b) Individual waives the right to an administrative disqualification hearing;

(2) A cabinet determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and

(3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

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

(a) "FS-80, Notice of SNAP Suspected Intentional Program Violation[~~Notice of Suspected Intentional Food Stamp Program Violation~~]", edition 3/13[~~4/09~~];

(b) "FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing", edition 3/13[~~4/09~~]; and

(c) "FS-111, Deferred Adjudication Disqualification Consent Agreement", edition 3/13[~~4/09~~].

(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: November 13, 2012

FILED WITH LRC: November 14, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2012 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2012 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is

made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 2, 2013. 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 Dearinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used by the Cabinet for Health and Family Services in determining if an intentional program violation (IPV) has occurred and the penalties that are applied for an IPV.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with 7 C.F.R. 273.16 and KRS Chapter 13B by establishing a hearing process for individuals suspected of an intentional program violation in the Supplemental Nutrition Assistance Program (SNAP).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing a hearing process and penalties associated with intentional program violations in SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing a hearing process and penalties for intentional program violations in SNAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will update the non-discrimination statement, remove unnecessary language, and reorganize for clarity the forms incorporated by reference: FS-80, Notice of SNAP Suspected Intentional Program Violation; FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing; and FS-111, Deferred Adjudication Disqualification Consent Agreement as instructed by the Food and Nutrition Service (FNS) Office of Civil Rights. In addition, the amendment changes the name of the program from the former Food Stamp Program (FSP) to the Supplemental Nutrition Assistance Program (SNAP) in accordance with Public Law 110-246, The Food, Conservation and Energy Act of 2008. 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 comply with federal programmatic requirements and to avoid possibility for federally imposed corrective action or penalty.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the authorizing statutes by fulfilling and complying with programmatic requirements in SNAP.

(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 providing the correct non-discrimination statement on the forms incorporated by reference and aligning the program name in the administrative regulation with the newer federal program name.

(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 Kentucky households who are applying for and participating in SNAP. As of August 2012, there were 861,376 individuals comprising 410,475 households receiving SNAP benefits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require any new or additional actions on the part of SNAP applicants or recipients.

(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 involves no new or additional cost to SNAP applicants or recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): SNAP applicants and recipients will benefit by the consistency between the state and federal programs' names and the correct nondiscrimination statement on program forms.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature. No additional funding is initially required.

(b) On a continuing basis: No additional funding is needed on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100 percent federally funded through the United States Department of Agriculture. Program administrative costs are funded 50 percent federal and 50 percent state. Funding has been appropriated in the enacted budget.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 7 C.F.R 273.16

2. State compliance standards. KRS Chapter 13B, 194A.010, 194A.050

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.16

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 will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 7 C.F.R. 271.4, 7 C.F.R. 273.16, KRS Chapter 13B, 194A.010, 194A.050.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? This program has been operational for numerous years. The amendment to this administrative regulation is technical and conforming in nature. The administrative regulation will not generate new revenue for the state or local government in the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional or new costs are necessary 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
Kentucky Teachers' Retirement System
(New Administrative Regulation)

102 KAR 1:340. Calculation of final average salary when there is a corresponding change in length of employment during any of the final three (3) years immediately prior to retirement.

RELATES TO: KRS 161.220(9)
STATUTORY AUTHORITY: KRS 161.310
NECESSITY, FUNCTION AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.220(9) provides for the definition of "final average salary" for retirement calculation purposes. KRS 161.220(9) limits the amount of increases in salaries that can be included as final average salary when those increases are received for any of the three (3) years of employment immediately prior to retirement. The limitation does not apply when the member experiences a corresponding change in position or in length of employment. This administrative regulation provides the method for calculating final average salary when there is a change in length of employment.

Section 1. Any member who receives an increase in salary that exceeds the limits permitted for inclusion as final average salary under KRS 161.220(9)(b), but experiences a corresponding change in length of employment, shall have his or her final average salary calculated using salaries adjusted in the manner established in this section.

(1) The member shall receive one (1) additional day of salary for retirement calculation purposes at the member's base daily rate of pay for each day added to the member's annual contract in excess of the member's contracted days from the last immediately prior work year.

(2) The base daily rate of pay that may be used as additional salary credit shall not include compensation:

(a) For extra duties worked beyond the member's primary job duty for which the member receives most of his or her compensation;

(b) That exceeds the limitations of KRS 161.220(9)(b);

(c) That is not "annual compensation" as defined under KRS 161.220(10); or

(d) That is otherwise excluded from use in retirement calculations under the provisions of KRS 161.220 through 161.716.

(3) The additional days shall be worked days in order to have the additional salary included for retirement calculation purposes.

Dr. TOM SHELTON, Chairperson
APPROVED BY AGENCY: September 17, 2012
FILED WITH LRC: November 15, 2012 at 8 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2012 at 9:00 a.m. at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2012, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 close of business January 2, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a method for calculating a member's final average salary under KRS 161.220(9)(b) when the member experiences a corresponding change in the length of employment.

(b) The necessity of this administrative regulation: There is currently not an administrative regulation that provides a method for calculating a member's final average salary when there is a corresponding change in length of employment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.220(9)(b) provides exceptions for certain salary increases in a member's final years of service that would otherwise be excluded from use in retirement calculations. This administrative regulation will help define one of those exceptions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By helping define one of the exceptions under KRS 161.220(9)(b), this administrative regulation will provide regulatory guidance for KTRS in applying the statute in calculating members' retirement allowances.

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

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects members whose salaries increase beyond the limitations of KRS 161.220(9)(b) for inclusion in retirement calculation purposes, but experience a corresponding change in length of employment.

(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: Members will not be required to take any action as a result of this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). There are no additional benefits.

(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: No additional funding is needed for the implementation and enforcement of the proposed administrative amendment.

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

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

(9) Tiering: Is tiering applied? Tiering is not applied, as the

regulation applies equally to all members whose salaries exceed the limitations of KRS 161.220(9)(b), but who also experience a corresponding change in length of employment.

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 Teachers' Retirement System.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310 and KRS 161.220(9).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The proposed administrative regulation does generate any additional revenues or expenditures.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(New Administrative Regulation)

202 KAR 7:530. Emergency Medical Services data collection, management, and compliance.

RELATES TO: KRS 311A.020, 311A.035, 311A.045, 311A.060, 311A.155, 311A.190

STATUTORY AUTHORITY: KRS 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.190 authorizes the Kentucky Board of Emergency Medical Services to promulgate administrative regulations concerning EMS information that ambulance services shall furnish to the board. KRS 311A.190 authorizes the Kentucky Board of Emergency Medical Services to require collection and submission of EMS data that will allow for analysis of the state's needs for provision of EMS. KRS 311A.190 authorizes the board to collect data that will allow the state to participate in the National Emergency Medical Services Information System (NEMSIS), a multi-partnered project that is funded by the National Highway Traffic Safety Administration, the Health Resources and Services Administration, the Centers for Disease Control and Prevention, the Federal Emergency Management Administration, and HRSA's Office of Rural Health Policy. This administrative regulation establishes standards and criteria for data collection, submission, and compliance.

Section 1. Data Collection and Statewide Compliance Plan. (1) The board shall require each licensed ambulance service to collect and submit run report data that aids in identifying patient care needs in the Commonwealth of Kentucky.

(2) The board shall collect, maintain, and use data provided by licensed ground and air ambulance services to assist the board and other state and federal agencies relevant to emergency management or public health.

(3) The information and data collected shall be used at a minimum to determine demographic trends and other emerging situations involving the provision of EMS to and the medical transport of individuals within the state.

(4) The board shall collect and use the submitted data to develop and adopt a statewide plan for EMS Information and Analysis.

Section 2. Data Management Committee. (1) A Data Management Committee shall be established by this Section of this administrative regulation.

(2) The Data Management Committee shall consist of seven (7) members appointed by the board chair in the manner established in 202 KAR 7:020.

(3) Any office of the board staff member specifically employed through or designated by the Kentucky Community and Technical College (KCTCS) for the purpose of EMS data collection and analysis shall serve as the staff liaison for the Data Management Committee.

(4) The Data Management Committee shall be responsible for the following:

(a) The development of a statewide plan for data collection and compliance;

(b) Identification of information initiatives for EMS in Kentucky;

(c) Identification and research of funding sources tied to EMS data collection;

(d) Assistance to licensed services with questions or other needs associated with this administrative regulation, KRS Chapter 311A, and other issues associated with the board's statutory authority to require data collection and submission; and

(e) Matters identified by board members, the chair, or the executive director that involve data collection, data submission, or information use.

(5) The Data Management Committee shall be conducted in accordance with 202 KAR 7:020 and the board bylaws.

(6) The Data Management Committee shall schedule on an annual basis at least six (6) regular meetings.

Section 3. Data Collection and Submission. (1) Each licensed ground and air ambulance service shall collect data relevant to patient care in Kentucky.

(2) Each service shall collect data at a rate that allows the service to submit the required data elements to the board on a schedule established by Section 5 of this administrative regulation.

Section 4. (1) The most recent version of the National EMS Information System (NEMSIS) data dictionary, US Department of Transportation National Highway Traffic Safety Administration (NHTSA) Uniform Pre-Hospital Emergency Medical Services (EMS) Dataset shall be Kentucky's standard for required data elements.

(2) The board shall not require information that is not contained within the most recent version of the NEMSIS data dictionary.

(3) The required data set shall be known as the Kentucky Emergency Medical Services Information System (KEMSIS) project.

Section 5. Compliance; manner and rate of submission. (1) Each licensed service shall submit data electronically.

(2) Data shall be provided electronically to KBEMS no later than the 15th day of the month following the last day of the prior reporting month. (Example: The day of submission for data collected in January is February 15th.)

(3) Failure to submit collected data at the rate required by subsection (2) of this section shall subject a service to disciplinary action under KRS Chapter 311A.

Section 6. Quality of Data determined by completeness and accuracy. (1) The board shall determine a service's compliance with data collection requirements by the quality of data submitted.

(2) The quality of a service's data shall be determined by the completeness and the accuracy of the submitted data.

(3) A service shall submit data that meets both components of

compliance.

(4) The board shall determine data completeness by comparing a service's number of submitted records with the number of the service's submitted records that contain fully incomplete or partially incomplete fields.

(5) The accuracy of data shall be determined by comparing the total number of fields in a service's submitted records with the total number of a service's fields completed correctly.

(6) The board shall impose on a service a plan of correction pursuant to KRS 311A.060 and 202 KAR 7:501 when a service's rate of accuracy, completeness, or both falls below ninety (90) percent for three (3) consecutive months.

(7) The eligibility of a service to receive block grant funds pursuant to 202 KAR 7:520 shall be dependent on compliance with the data collection requirements in this administrative regulation.

(8) Failure to comply with a plan of correction shall subject a service to disciplinary action under KRS 311A.060.

(9) The board staff shall report to the Data Management Committee a determination of incomplete or inaccurate data submission that results in a plan of correction.

Section 7. Run Reports. (1) Each ambulance service shall provide a copy of the completed run report to the receiving medical facility prior to departure.

(2) A service that cannot leave a copy of the completed run report with the receiving medical facility prior to departure shall leave the "Kentucky Continuation of Care Form," KBEMS-CoC (03/2013).

(3) If a service provides the receiving hospital or other healthcare facility with the "Kentucky Continuation of Care Form," KBEMS-CoC (03/2013), the service shall have twenty-four (24) hours to provide the full patient care report.

(4) The twenty-four (24) hour timeframe for delivery of the full patient care report shall not apply to situations involving mass disaster, mass casualty, or other documented emergency.

Section 8. Data Use and Confidentiality. (1) Unless otherwise required by law, the board shall not release information of a confidential or private nature or any information protected by local, state, or federal nondisclosure laws.

(2) The board may release information of a statistical nature that does not reveal or contain personal information.

(3) The board may share information with research, state, and other organizations that have a shared interest in the promotion of EMS or patient care.

(4) Unless otherwise required by law, the board shall not release information for purely commercial uses.

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

(a) "US Department of Transportation National Highway Traffic Safety Administration (NHTSA) Uniform Pre-Hospital Emergency Medical Services (EMS) Dataset"; and

(b) "Kentucky Continuation of Care Form", KBEMS-CoC (03/2013).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Emergency Medical Services located in Kentucky Community and Technical College System Office, 300 North Main Street Versailles, Kentucky 40383, Monday through Friday, 8:30 a.m. to 4:30 p.m.

This is to certify that the Executive Director of 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)

MIKE POYNTER, Executive Director

APPROVED BY AGENCY: November 13, 2012

FILED WITH LRC: November 14, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2012 at 10:00 a.m. Eastern Time at the Kentucky Community and Technical College System, 300 North Main Street, Versailles, Kentucky 40383. Individuals interested in being heard at this hearing shall notify the Kentucky Board of Emergency Medical Services in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2013. 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Pamela Duncan

(1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:530 establishes the requirements for the Emergency Medical Services data collection process. The regulation sets the compliance standards and consequences for failure to meet requirements.

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 311A.190 which creates the program for distribution of state grant funds to fiscal courts and the EMS agencies that operate for emergency response in the counties involved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 311A.190 which establishes a mandate to collect, report, and analyze data regarding the provision of emergency services in the state of Kentucky. Additionally, KRS 311A.190 sets the standard for EMS agencies to provide patient care reports to treating medical facilities or other agencies taking charge of the patient for follow-on care.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.035 requires the Kentucky Board of EMS to establish minimum data reporting requirements and to develop a system of EMS delivery for the state of Kentucky. KRS 311A.190 requires the collection and submission of data to KBEMS by EMS services licensed in Kentucky. This administrative regulation is mandated through KRS 311A.190 and will create a mechanism for orderly and systematic collection and reporting of EMS data.

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

(a) How the amendment will change this existing administrative regulation: This regulation is not an amendment. It is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This regulation is not an amendment. It is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation is not an amendment. It is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation is not an amendment. It 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:

(a) All ground ambulance services licensed in Kentucky will be required to submit data for inclusion in the KEMSIS and further in the NEMSIS program;

(b) EMS personnel who will benefit from the collection, submission and analysis of data to create innovations in EMS and to advance their scope of practice by becoming part of the federal NEMSIS project;

(c) County and City Governments who fund EMS within their governmental boundaries because the creation of the KEMSIS program for inclusion in the federal NEMSIS program will mean

Kentucky becomes eligible for any funds available through this program; and

(d) All residents and citizens who receive EMS in Kentucky because EMS data will be used to increase the quality of care and the efficiency of care provided by EMS professionals in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: EMS Personnel, EMS Ambulance Providers, and County and City Governments will all benefit from the amended regulation because it will mandate data collection that will be used to study demographic trends that will assist Kentucky when attempting to increase the quality of EMS care provided throughout the state.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities – services, county and city governments, and personnel – shall meet applicable data collection requirements by becoming part of the state KEMSIS program and feeding data into the database through the "state field bridge" or other electronic mechanism. Because most services are already billing through electronic means, most data will be able to be uploaded with little increased effort on the part of agencies and their personnel.

(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 compliance will be minimal and may actually result in an increase of revenue through grant funds that will result from inclusion of the Commonwealth in the federal data collection system known as NEMSIS.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit due to the data's use in making EMS more efficient, more modern, and more responsive. Additionally, agencies may become the beneficiaries of grant funds resulting from the inclusion of Kentucky in the federal data collection program known as NEMSIS.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: KBEMS will incur costs that will be mainly reimbursed through a federal DOT grant. Without this regulation, KBEMS may lose the federal grant monies provided to implement the KEMSIS system.

(a) Initially: The above paragraph is accurate for initial costs; and

(b) On a continuing basis: The continuing costs may decline as the system becomes more streamlined and agencies become compliant with the data collection and submission requirements in this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBEMS is a state agency that receives its annual budget from the state government as well funds obtained through the federal DOT grant governing NEMSIS and the state version of the data collection program known as KEMSIS.

(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 funds will be necessary. The program is in its second year of implementation and is ready to move on to the next stage which cannot be achieved without this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not used as this block grant is specific to EMS in Kentucky and applies only to EMS data.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The regulation will relate to any County or City owned ambulance service or any ambulance service operated on behalf of a City or County.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.010, 311A.030(2), 311A.035, 311A.190. No federal statutes necessitate this amendment but federal initiatives through the DOT create the NEMSIS program.

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? KBEMS has purchased a state field bridge to assist agencies, including those operated by local governments in order to assist EMS services in their compliance with data collection requirements.

(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 regulation will supply revenue to the state or local government entities by qualifying Kentucky licensed services and KBEMS for federal funds related to the NEMSIS program.

(c) How much will it cost to administer this program for the first year? In the first year, this administrative regulation will not impose any new need for expenditures or revenue outlay by the governmental entities involved.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the amendment will not cost any revenues above and beyond what is currently being expended to electronically bill for EMS services provided by EMS agencies throughout the state.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(New Administrative Regulation)

701 KAR 5:140. Districts of innovation.

RELATES TO: KRS 156.108, 156.160(1)(g), 160.107

STATUTORY AUTHORITY: KRS 156.108, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: 156.160(1)(g) gives the Kentucky Board of Education the authority to promulgate administrative regulations and KRS 156.108 requires the Kentucky Board of Education to promulgate administrative regulations to prescribe the conditions and procedures to be used by a local board of education to be approved as a district of innovation by the Kentucky Board of Education. This administrative regulation establishes the requirements and approval process for districts of innovation.

Section 1. Definitions. (1) "Competency based learning" means a framework for the awarding of credit to students upon mastery of Kentucky's Core Academic Standards in 704 KAR 3:303; any additional competencies also include explicit, measurable, transferable learning objectives that empower students; students receive timely, differentiated support based on their individual learning needs; and learning outcomes emphasize competencies that include application and creation of knowledge along with the development of important skills and dispositions.

(2) "District of Innovation" is defined in KRS 156.108.

(3) "Eligible employees" is defined in KRS 160.107.

(4) "Expanded Learning Opportunities" means initiatives that provide students additional opportunities for enrichment, personal growth, and engagement outside the traditional school day, and that may include extended day/year initiatives, before- and after-school programs, Saturday, weekend, and summer programs, distance learning, and early childhood education initiatives.

(5) "Innovation" is defined in KRS 156.108.

(6) "Innovative strategies" mean strategies that provide nontra-

ditional approaches to all areas of curriculum, instruction, assessment, governance, and school operation.

(7) "School of Innovation" is defined in KRS 156.108.

Section 2. Conditions and Areas of Emphasis for Innovation. (1) Any public school district may submit an application for approval as a district of innovation. No individual school may submit an application except as part of a district application.

(2) A district may include in its application a request for waiver from any administrative regulation promulgated by the Board of Education or any Kentucky Revised Statute related to public schools except the following:

(a) Any health, safety, civil rights, or disability rights requirements in statute or administrative regulation;

(b) The compulsory attendance requirements under KRS 158.030 and 158.100;

(c) The Kentucky Core Academic Standards outlined in KRS 158.685 and 704 KAR 3:303;

(d) The minimum high school graduation requirements set forth in 704 KAR 3:305;

(e) The statewide assessment system requirements specified in KRS 158.6453;

(f) The financial audit, audit procedures, and audit requirements under KRS 156.265;

(g) The criminal background check requirements specified in KRS 160.180 and 161.148;

(h) The open records and meetings requirements in KRS Chapter 61;

(i) The purchasing requirements and limitations in KRS Chapter 45A, 156,074 and 156.480; or

(j) The instructional time requirements in KRS 158.070. A district may include in its application a request to implement competency based learning strategies that measure a student's mastery of the curriculum standards, regardless of the amount of instructional time completed.

(3) A district may incorporate in its application any innovative strategies and models that have been shown to be effective in other districts or states or new innovative strategies or models created by the district or school. Innovative strategies may include:

(a) Moving to a competency based learning system, including development of alternate methods for delivering curriculum and for measuring mastery of standards and skills;

(b) Creating multiple pathways to graduation, including rigorous career and technical pathways, apprenticeships, early college high schools, early graduation options, and digital learning opportunities;

(c) Rethinking the times and places that learning occurs, including lengthening or flexing the school day and school year, moving learning beyond the traditional school building, and incorporating expanded learning opportunities;

(d) Implementing alternative forms of school governance that include the engagement of teachers, parents, and community members that do not meet the requirements of KRS 160.345;

(e) Designing learning environments that include the student in the design of learning pathways; and

(f) Creating additional job classifications for certified and classified staff beyond the traditional roles of teacher and instructional assistants and compensating staff on schedules other than single salary schedules.

Section 3. Application Process. (1) A district may submit an original or renewal application to the department at any time within the calendar year provided the implementation date is at least 180 days from the date of submission of the application.

(2) Pursuant to KRS 160.107, a district shall identify and include in its application those schools that have voluntarily chosen to be schools of innovation, any persistently low-achieving schools that the district is requiring to be schools of innovation, and any district operated schools the district plans to create in its application.

(3) The department shall provide technical assistance to districts prior to application submission.

(4) The application shall include the following components:

(a) An individual school level plan for each school included in the district's innovation plan and for any district-operated school the district plans to create under the application;

(b) A description of how the district's innovation plan shall provide greater improvement in student outcomes, particularly among low-achieving students, than the outcomes the district would expect using its existing instructional programs. The plan shall specifically address how it more effectively improves the multiple measures required under the accountability system, including targets for student achievement, student growth, achievement gap reduction, graduation rate, and college and career readiness;

(c) A description of the district's plan to ensure that capacity exists in both human and fiscal resources to implement the changes needed in the district to ensure a successful implementation of the district's innovation plan;

(d) A description of the district's attendance policy for non traditional settings and the district's plan to ensure that all students meet attendance requirements;

(e) A plan for developing alternate assessment options and measuring student performance outcomes in non traditional settings including extended learning opportunities, apprenticeships, private instruction, work-study, study in a foreign country, awarding of competency based learning credit, community service, independent study, and on-line learning opportunities;

(f) A description and rationale for the innovation strategies and models chosen to be implemented;

(g) A list of the statutes, administrative regulations and local board policies from which the local district is seeking a waiver or exemption in order to implement innovative practices and an explanation of how the requirements of those authorities are a barrier to that implementation;

(h) Documentation of broad support for innovations including parents, local institutions of higher education, and business and community partners. This documentation may include:

1. Minutes of local board of education meetings where the District of Innovation application was discussed;

2. Transcripts or minutes from stakeholder meetings designed specifically to develop or support the District of Innovation application;

3. Minutes of school-based decision making (SBDM) councils that include information showing an affirmative vote of at least seventy (70) percent of the eligible employees to participate in the application as well as discussion of the application itself; and

4. Letters of support and commitment to adhere to the innovation plan from a variety of local stakeholder groups including parent, community, and business groups;

(i) A detailed budget indicating how the local board of education shall support implementation of the innovation plan over the course of the initial five (5) year innovation period;

(j) Signatures of the superintendent and board chair along with official board minutes documenting a vote to approve submission of the application;

(k) Signatures of the chair of the SBDM council for each school participating in the application; and

(l) A description of how the district shall support job-embedded professional learning.

(5) A committee designated by the Commissioner shall review and recommend approval or denial of a completed application to the Kentucky Board of Education within sixty (60) days from receipt of the completed application. An incomplete or denied application shall be returned to the district and, if re submitted, the committee shall review and recommend approval or denial to the Kentucky Board of Education within sixty (60) days of receipt of the resubmitted application.

(6) The Kentucky Board of Education shall make the final decision on approval or denial of the application at its first regularly scheduled meeting following the sixty (60) day review period. A successful application shall be given an initial approval for five (5) years. A district that is approved and whose application is still active after five (5) years may submit a renewal application using the application process outlined in this regulation. Each renewal of a district of innovation shall not exceed five (5) years.

(7) A district approved as a District of Innovation may amend its plan as needed at any time after the first full year of implementation using a process established by the Department of Education. The amended plan shall be referred to the committee described in

this section.

Section 4. Monitoring of Plan Implementation. (1) District and school innovation plans shall be incorporated within the overall district comprehensive plan or shall replace the district comprehensive plan.

(2) At the completion of the second year after plan approval and each year thereafter for the term of the approval status, a district approved as a District of Innovation shall annually provide data to the commissioner that shall include the following:

(a) Number of students served by the innovation plan, total number and by socio-economic status, race/ethnicity, gender and disability and grade level;

(b) Number of students served by the innovation plan not on track to graduate from high school, total number and by socio-economic status, race/ethnicity, gender and disability and grade level;

(c) Documentation of student progress toward graduation and college and career readiness;

(d) Total number of certified teachers participating in the innovation plan and their roles and responsibilities;

(e) Documentation of certified and classified staff operating in a non-traditional school environment;

(f) Documentation of any extended learning opportunities in which students in the innovation school participate for the purposes of earning or recovering credit, including qualifications of instructors, time spent, and student outcomes; and

(g) Other measurable outcomes specific to the district's innovation plan as described in the initial application.

(3) At the end of the second year after plan approval and each year thereafter for the term of the approval status, a district approved as a District of Innovation shall receive an annual site visit from a review team selected and trained by the Department of Education. The purpose of the visit shall be to monitor progress and interview staff and students to collect qualitative data on the effect of the innovation plan and for future research needs.

(a) The Department of Education shall develop a rubric to be used by the site visit team to monitor the implementation of the innovation plan. The rubric and interview questions shall be provided to all innovation districts and posted on the Department of Education Web site; and

(b) The Department of Education shall be responsible for providing training on the use of the rubric to site team members.

Section 5. Probation, Revocation, and Appeal Procedures. (1) After its annual review of a district's implementation report and the report of the site visit team, the Kentucky Board of Education may, on the anniversary of the application approval, determine that a district should be placed on probation and shall provide the district with a corrective action plan.

(2) Upon the subsequent year's review of the reports, if the Kentucky Board of Education does not believe the district has met the expectations of the corrective action plan, it may revoke a district's approval as a District of Innovation.

(3) Upon notification of probation or revocation of District of Innovation status, the Kentucky Board of Education shall give the district thirty (30) days to appeal the decision in writing and shall rule on the appeal at its next regularly scheduled meeting following the submission of the appeal.

(4) Any district that has had its status as a District of Innovation revoked must wait one (1) calendar year before re applying to be a District of Innovation.

Section 6. (1) Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Districts of Innovation Application", November 2012; and

(b) "Districts of Innovation Application Scoring Rubric", November 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Innovation and Partner Engagement, 1st floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLLIDAY, Ph.D., Commissioner of Education
DAVID KAREM, Chairperson

APPROVED BY AGENCY: November 15, 2012

FILED WITH LRC: November 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 21, 2012, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for districts applying for District of Innovation status.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.108 to prescribe the conditions and procedures to be used by a local board of education to be approved as a District of Innovation.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific guidelines for the conditions, application process, monitoring, evaluating, and consequences for districts applying for district of innovation status.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides districts the necessary guidance for submitting an application for District of Innovation status and further provides guidance on how approved applications will be monitored and what consequences occur when an approved district fails to adequately implement its plan.

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

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

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

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky are eligible to apply for District of Innovation status.

(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: The administrative regulation will impact districts applying for District of Innovation status by providing necessary guid-

ance for applying and will further affect districts approved as Districts of Innovation by providing guidance on the monitoring and evaluation of approved district applications.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts approved as Districts of Innovation must follow the guidance for monitoring and evaluation of approved applications as well as honoring any consequences that must be completed for failure to implement their plan.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The approved Districts of Innovation will be provided flexibility from the requirements of selected administrative regulations, Kentucky Revised Statutes, and local board of education policies for school administrators, teachers, and staff to meet the diverse needs of students.

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

(a) Initially: Minimal administrative cost to promote and manage the application process. Current staff will be used to manage the process.

(b) On a continuing basis: The proposed regulation results in additional costs to the agency to conduct monitoring visits. The cost is estimated at $5,000 per District of Innovation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The agency's general funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

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 agency and 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 156.108.

(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. Minimal effect. The management of the process will be handled by existing staff at the agency. Agency funds will be used for this process.

(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? $5,000.

(d) How much will it cost to administer this program for subsequent years? Monitoring program will cost approximately $5,000 per approved district. We anticipate three to five (3-5) new districts each year.

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

Revenues (+/-):

Expenditures (+/-): This administrative regulation doesn't have an expenditure impact on local school districts. The expenditure impact on the agency is the cost of monitoring the implementation of District of Innovation plans and this impact should be addressed by the re-allocation of existing funds to cover these costs.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division for Behavioral Health
(New Administrative Regulation)

908 KAR 1:400. Procedures for substance abuse prevention.

RELATES TO: KRS 194A.050, 194A.070, 222.221

STATUTORY AUTHORITY: KRS 222.211, 222.231

NECESSITY, FUNCTION, AND CONFORMITY: KRS 222.231 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish requirements and standards for licensing agencies and approving substance abuse prevention programs. The secretary shall 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. This administrative regulation establishes licensing requirements for substance abuse prevention agencies.

Section 1. Definitions. (1) "Agency" is defined by KRS 222.005 (2).

(2) "Alcohol and other drug abuse" is defined by KRS 222.005(3).

(3) "Cabinet" is defined by KRS 194A.005.

(4) "Certified Prevention Specialist" means an individual who is approved by the Kentucky Certification Board of Prevention Professionals.

(5) "Coalition" means a partnership of volunteers working to reduce alcohol, tobacco, and other drug abuse problems through community-wide prevention strategies.

(6) "Consumer" means the recipient of prevention services.

(7) "Department" is defined by KRS 194A.030(4).

(8) "Early Intervention Program" is a program that helps Kentucky youths under age twenty-one (21) and their families learn about risks and consequences of substance use, the benefits of good health and well-being among youths, and promotes positive decision-making to resist alcohol, tobacco, and other drugs.

(9) "International Certification and Reciprocity Consortium" (ICRC) establishes the standards of practice in addiction counseling, prevention, and clinical supervision through testing and credentialing of addiction professionals.

(10) "Kentucky Certification Board for Prevention Professionals (KCBPP)" means an ICRC member board that establishes competency-based certification for prevention professionals that promotes and maintains integrity and quality of service for alcohol, tobacco and other drug prevention.

(11) "Prevention" means the act of preventing problems resulting from alcohol, tobacco, and other drug use.

(12) "Prevention Director" means a prevention professional who manages Regional Prevention Center staff, serves as liaison between Regional Prevention Center and the department, and is responsible for developing the annual plan and budget documents for the prevention program.

(13) "Prevention Professional" means a paid staff, excluding clerical staff, employed by a Regional Prevention Center actively involved in the development and implementation of a substance abuse prevention program.

(14) "Regional Prevention Center" (RPC) means a program funded by the department for the purpose of developing, providing, and coordinating substance abuse prevention programs and activities in a specified geographical region of the state.

(15) "Strategic Prevention Framework" (SPF) means a plan-

ning process identified by Substance Abuse Mental Health Service Administration.

Section 2. Licensing Procedures. (1) An agency receiving remuneration for any prevention program shall not operate without first obtaining an alcohol and other drug prevention license from the cabinet, unless the agency is exempted under KRS 222.003(1) and (2).

(2) An agency shall be licensed in accordance with 908 KAR 1:380, Section 2.

(3) An application for licensure shall be submitted in writing to the Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(4) The license shall remain in effect for one (1) year from the date of issuance and may be renewed, unless the license has been:

(a) Revoked;

(b) Suspended; or

(c) Modified by CHFS for a substantial failure to comply with the licensure standards.

(5) The license shall be conspicuously posted in a public area at the agency and shall indicate the year the license was issued or renewed.

(6) An application for licensure or renewal shall include an on-site inspection by the cabinet representatives to determine compliance with licensure standards.

(7) The applicant shall provide the cabinet or its representatives access during normal hours of operation to any document needed to complete the inspection.

(8) The cabinet shall notify the agency in writing within ten (10) calendar days of any violation of licensure standards identified during the inspection.

(9) The agency shall submit to the cabinet a written plan of correction within ten (10) calendar days of receipt of the notice of violation. The correction plan shall specify the corrective action to be taken and the date when each violation shall be corrected.

(10) The certificate of licensure shall be the property of the cabinet and shall be returned upon closure or revocation of the license.

(11) The cabinet shall make available to the public a list of all licensed alcohol and other drug prevention agencies and may issue revisions and corrections to this list as changes occur.

(12) Any agency operating a program without first obtaining a license shall be subject to the penalties as stated in KRS 222.990(2).

Section 3. Changes in Agency Status. (1) An agency shall notify the cabinet within ten (10) working days of a change in:

(a) Name;

(b) Location;

(c) Ownership; or

(d) Discontinuance of services.

(2) If there is a change in agency name, ownership, or location, the cabinet may issue a new license for the remainder of the current licensure period.

Section 4. Staffing and Staff Qualifications. (1) A prevention professional shall be certified by the Kentucky Certification Board for Prevention Professionals as an International Certified Prevention Specialist within thirty-six (36) months of:

(a) The effective date of this administrative regulation; or

(b) Initial employment.

(2) The agency shall designate one (1) individual as the prevention director who shall:

(a) Be certified by the KCBPP as an International Certified Prevention Specialist; and

(b) Have a bachelors degree plus five (5) years of work experience in prevention or the related fields of health, social science, marketing, communication, or education; or

(c) Have a master's degree with two (2) years of work experience in prevention administration or administration in the related fields of health, social sciences, marketing, communication, or education.

(3) Staff responsible for providing prevention services within the agency shall be clearly designated.

(4) The agency shall designate an individual to serve as an ombudsman who shall be responsible for responding to:

(a) Staff or consumer complaints; and

(b) Staff or consumer grievances.

Section 5. Regional Prevention Centers. (1) RPC staff shall:

(a) Conduct the following program management functions:

1. Planning;

2. Staffing;

3. Policy development;

4. Program development; and

5. Program evaluation.

(b)Prepare a written mission statement and program operations manuals which shall be reviewed by the prevention director at least one (1) time per year and updated as necessary;

(c) Coordinate and implement all prevention programs, initiatives, and activities funded by the department in the region, with the exception of those specifically exempted by the department;

(d) Coordinate and implement an Early Intervention Program;

(e) Assist communities to develop and implement educational and environmental strategies for adults and children to prevent the:

1. Use of illegal drugs;

2. Abuse of alcohol; and

3. Abuse of other chemicals such as tobacco, pharmaceuticals, and household products that have psychoactive properties;

(f) Collaborate with community agencies and organizations in the provision of prevention services;

(g) Tailor programs to the characteristics of specific target audiences, including age, gender, drug-use pattern, racial, ethnic, and cultural heritage;

(h) Gather and disseminate information about drug-specific prevention activities provided by other agencies, organizations, or individuals within their region;

(i) Participate in mentoring activities and statewide meetings as designated by the department;

(j) Participate in a computerized communication system with the department and other RPCs;

(k) Facilitate cooperation among agencies, groups, and individuals involved in prevention;

(l) Develop, maintain, and sustain regional and county coalitions;

(m) Create forums for coordination and networking of substance abuse prevention professional; and

(n) Provide consultation with community organizations that wish to develop comprehensive prevention program.

(2) A Prevention professional working in RPCs shall provide:

(a) Information on subjects relevant to substance abuse prevention;

(b) Professional information to assist community members in acquiring the knowledge necessary for their involvement in prevention efforts;

(c) Resources for use in community prevention programs;

(d) Books, pamphlets, audio visual, and training materials which shall be made available for use by the community; and

(e) Well-defined, structured training and learning experiences including both information and skill development designed to directly influence the drug use behavior of the consumer and incorporate evidence-based and professionally developed curricula. The program shall train:

1. Persons to reach others with prevention information or lead prevention activities in the groups with which they are involved; and

2. Professionals and volunteers in the community to conduct training for others.

(3) RPC staff shall submit schedules of training and other events to the department upon request.

(4) RPC staff shall:

1. Assist or serve only those prevention programs with a primary content that deals specifically with drug use; and

2. Not deliver programs with a primary content aimed at raising self-esteem, increasing general wellness, raising socio-economic status, or similar factors that may be indirectly related to drug abuse.

(5) RPCs may:

(a) Raise community awareness of the need for a comprehensive approach to prevention;

(b) Encourage and assist in community planning for prevention activities;

(c) Provide consultation and training for providers of prevention programs.

(d) Raise community awareness of the need for intervention and recovery programs as part of a comprehensive approach to prevention;

(e) Encourage and assist in community planning for intervention and recovery activities; and

(f) Provide consultation and training for providers of intervention and recovery. programs.

(6) RPC staff shall not provide intervention and recovery programs for persons who are in need of substance abuse treatment.

Section 6. Department Responsibilities. The department shall:

(1) Conduct on-site visits to:

(a) Review program progress and compliance; and

(b) Conduct random record checks for accuracy and validity.

(2) Review and approve budgets and quarterly reports to ensure accuracy and efficiency in spending;

(3) Review training plans for RPC staff; and

(4) Ensure adherence to the Strategic Prevention Framework to include:

(a) Assessment;

(b) Building capacity;

(c) Planning;

(d) Implementation;

(e) Evaluation;

(f) Sustainability; and

(g) Cultural competence.

STEPHEN HALL, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 8, 2012

FILED WITH LRC: November 9, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2012, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing December 14, 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 January 2, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet for Health and Family Services, 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 Persons: Connie Smith, IJ. Eneje

(1) Provide a brief summary of:

(a) What this administrative regulation does: 908 KAR 1:400 establishes procedures for Substance Abuse Prevention agencies by:

1. Defining terms and concepts essential for the administration of the Regional Prevention Center (RPC) system

2. Establishing guidelines for RPC program management functions;

3. Defining role and function of the RPC network within Kentucky's Prevention System

4. Providing guidelines for appropriate types of services to be delivered to recipients of prevention services.

5. Establishing qualifications for (RPC) staff and Directors

(b) The necessity of this administrative regulation: The Division of Behavioral Health is required to set quality standards and monitor the activities of the RPC system to ensure consistency with federal Substance Abuse Prevention and Treatment (SAPT) Block Grant requirements. The Federal Government also requires all SAPT Block Grant recipients to report National Outcome Measures (NOMs) annually. This regulation will help improve planning for NOMs and increase accountability in reporting. In addition, this administrative regulation is necessary to update language no longer relevant to Kentucky Prevention System.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 908 KAR 1:400 defines how the cabinet addresses tobacco addiction, alcohol and other drug abuse as required by KRS 222.211.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will support the cabinet's ability to deliver effective prevention services by increasing accountability for Prevention Block Grant dollars as required by the federal Center for Substance Abuse Prevention.

(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 regulation affects the 14 RPCs, their directors, and staff.

(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: Regional Prevention Center Directors will have to obtain certification within three (3) years of employment if currently employed as a prevention profession, or the effective date of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be some cost to take the certification exam – this is contingent upon the fees set by The Kentucky Certification Board for Prevention Professionals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): RPC Directors who are not currently certified prevention professionals will be knowledgeable of prevention principles, best practices and evidence-based strategies and programs. RPC Staff are already required to obtain their Prevention Certification. This will improve communication between staff and directors as well as improve the quality of the annual work plans and the work performed by the RPCs.

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

(a) Initially: There is no additional cost to the department as a result of this regulation. Operation of the program will cost $5,757,468 initially.

(b) On a continuing basis: There is no additional cost to the department as a result of this regulation. Operation of the program will cost $5,757,468 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 SAPT Block Grant ($4,406,134) and General Fund dollars ($1,351,334).

(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 funding will be necessary as a result of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it increase any fees.

(9) TIERING: Is tiering applied? No. tiering will be applied as a result of 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? This administrative regulation will impact the fourteen (14) Regional Prevention Center (RPC) Directors representing all 120 counties of the state.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 222.211 and KRS 222.231.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year. The program operates through a combination of federal funding ($4,406,134 SAPT Block Grant and $1,351,134 in state General Funds).

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

(c) How much will it cost to administer this program for the first year? $5,757,468.

(d) How much will it cost to administer this program for subsequent years? $5,757,468.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The cabinet is a pass-thru for the SAPT Block Grant. The majority of these funds are allocated to the 14 Regional Prevention Centers to support work in their communities. $187,000 per year is a pass-thru to the Kentucky Alliance of Boys & Girls Clubs to fund the implementation of Skills Mastery and Resistance Training (SMART Moves), a proprietary program designed and owned by the Boys & Girls Clubs of America to teach youth life skills, as well as refusal skills.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. Part 96.

2. State compliance standards. 45 C.F.R. Part 96.125 Primary Prevention: "(a) For purposes of §96.124, each State/Territory shall develop and implement a comprehensive prevention program which includes a broad array of prevention strategies directed at individuals not identified to be in need of treatment. The comprehensive program shall be provided either directly or through one or more public or nonprofit private entities. The comprehensive primary prevention program shall include activities and services provided in a variety of settings for both the general population, as well as targeting sub-groups who are at high risk for substance abuse."

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. Part 96.125 Primary Prevention. "(b) In implementing the prevention program the State shall use a variety of strategies, as appropriate for each target group, including but not limited to the following:

(1) Information Dissemination: This strategy provides awareness and knowledge of the nature and extent of alcohol, tobacco and drug use, abuse and addiction and their effects on individuals, families and communities. It also provides knowledge and awareness of available prevention programs and services. Information dissemination is characterized by one-way communication from the source to the audience, with limited contact between the two. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

(i) Clearinghouse/information resource center(s);

(ii) Resource directories;

(iii) Media campaigns;

(iv) Brochures;

(v) Radio/TV public service announcements;

(vi) Speaking engagements;

(vii) Health fairs/health promotion; and

(viii) Information lines.

(2) Education: This strategy involves two-way communication and is distinguished from the Information Dissemination strategy by the fact that interaction between the educator/facilitator and the participants is the basis of its activities. Activities under this strategy aim to affect critical life and social skills, including decision-making, refusal skills, critical analysis (e.g. of media messages) and systematic judgment abilities. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

(i) Classroom and/or small group sessions (all ages);

(ii) Parenting and family management classes;

(iii) Peer leader/helper programs;

(iv) Education programs for youth groups; and

(v) Children of substance abusers groups.

(3) Alternatives: This strategy provides for the participation of target populations in activities that exclude alcohol, tobacco and other drug use. The assumption is that constructive and healthy activities offset the attraction to, or otherwise meet the needs usually filled by alcohol, tobacco and other drugs and would, therefore, minimize or obviate resort to the latter. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

(i) Drug free dances and parties;

(ii) Youth/adult leadership activities;

(iii) Community drop-in centers; and

(iv) Community service activities.

(4) Problem Identification and Referral: This strategy aims at identification of those who have indulged in illegal/age-inappropriate use of tobacco or alcohol and those individuals who have indulged in the first use of illicit drugs in order to assess if their behavior can be reversed through education. It should be noted, however, that this strategy does not include any activity designed to determine if a person is in need of treatment. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

(i) Employee assistance programs;

(ii) Student assistance programs; and

(iii) Driving while under the influence/driving while intoxicated education programs.

(5) Community-Based Process: This strategy aims to enhance the ability of the community to more effectively provide prevention and treatment services for alcohol, tobacco and drug abuse disorders. Activities in this strategy include organizing, planning, enhancing efficiency and effectiveness of services implementation, inter-agency collaboration, coalition building and networking. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

(i) Community and volunteer training, e.g., neighborhood action training, training of key people in the system, staff/officials training;

(ii) Systematic planning;

(iii) Multi-agency coordination and collaboration;

(iv) Accessing services and funding; and

(v) Community team-building.

(6) Environmental: This strategy establishes or changes written and unwritten community standards, codes and attitudes, thereby influencing incidence and prevalence of the abuse of alcohol, tobacco and other drugs used in the general population. This strategy is divided into two subcategories to permit distinction between activities which center on legal and regulatory initiatives and those which relate to the service and action-oriented initiatives. Examples of activities conducted and methods used for this strategy shall

include (but not be limited to) the following:

(i) Promoting the establishment and review of alcohol, tobacco and drug use policies in schools;

(ii) Technical assistance to communities to maximize local enforcement procedures governing availability and distribution of alcohol, tobacco and other drug use;

(iii) Modifying alcohol and tobacco advertising practices; and

(iv) Product pricing strategies."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, this regulation defines:

The licensing procedure for an agency that receives remuneration for any prevention service;

Prevention Professional, Prevention Director and outlines minimum requirements for both positions;

Provides basic guidelines for the work of the Regional Prevention Center, Prevention Director and Prevention Professionals; and

Outlines the responsibilities of the department representatives with regard to on-site visits.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 45 C.F.R. Part 96.125, Primary Prevention, provides basic, general guidance related to the operation of a state prevention program rather than specific information concerning implementation processes and procedures. That responsibility is left to the individual state to determine. This regulation is designed to address the specific details related to program delivery and thereby ensure that the citizens of the Commonwealth receive quality prevention services in a manner that is intended to prevent or address substance use and abuse.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of November 13, 2012

Call to Order and Roll Call

The November meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, November 13, 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 October 2012 meeting were approved.

Present were:

Members: Senators Joe Bowen, David Givens, Joey Pendleton, and Representatives Johnny Bell, Robert Damron, and Jimmie Lee.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Karen Howard, Betsy Cupp, and Laura Napier.

Guests: Joe Cowles, Personnel Cabinet; DeVon Hankins, Kim Bechtel, Steven Jones, Dwight Price, Finance and Administration Cabinet; Karen Greenwell, Hartsel Stovall, Board of Barbering; Scott D. Majors, Board of Physical Therapy; Margaret Everson, Jeff Ross, Karen Waldrop, Department of Fish and Wildlife; Peter Goodman, Division of Water; Kevin Brown, Robin Chandler, Johnny W. Collett, Kentucky Department of Education; Stephanie Bell, Jeff Deroven, Daniel Hinton, Allyson Honaker, Brent Kirtley, Gerald Wuetcher, Public Service Commission; Dawn Bellis, Ann Ramser, William Swope, Department of Housing, Buildings and Construction; Jeff Jagnow, Kevin Mudd, Ray Peters; Diana Mullins, Chandra Venettozzi; Stuart Owen, Phyllis Sosa, Morallia Tran, Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on Tuesday, November 13, 2012, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified

101 KAR 2:210 & E. 2013 Plan Year Handbook for the Public Employee Health Insurance Program. Joe Cowles, general counsel, represented the department.

FINANCE AND ADMINISTRATION CABINET: Department of the Controller: Office of Financial Management: State Investment Commission

200 KAR 14:011. Qualified investments. Devon Hankins, policy advisor; Kim Bechtel, financial specialist; Steven Jones, portfolio manager; and Dwight Price, portfolio manager, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph, Sections 1, 2, 3, 6, 7, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A and for specificity. Without objection, and with agreement of the agency, the amendments were approved.

200 KAR 14:081. Repurchase agreement.

A motion was made and seconded to approve the following amendment: to amend Section 8 to make a technical correction. Without objection, and with agreement of the agency, the amendment was approved.

200 KAR 14:091. Guidelines for money market instruments.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 1 to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Barbering: Board

201 KAR 14:105. Barbering school enrollment and postgraduate requirements. Karen Greenwell, administrator, and Hartsel Stovall, chair, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 3 to clarify when a barber school employee is prohibited from also enrolling in the school as a student. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy: Board

201 KAR 22:001. Definitions for 201 KAR Chapter 22. Scott D. Majors, executive director, represented the board.

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 1:015. Boat and motor restrictions. Jeff Ross, assistant director of fisheries; Margaret Everson, general counsel; and Dr. Karen Waldrop, division director, represented the department.

301 KAR 1:146. Commercial fishing gear.

301 KAR 1:155. Commercial fishing requirements.

Game

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

Wildlife

301 KAR 4:070. Scientific and educational collecting permits.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Instruction

704 KAR 3:305. Minimum requirements for high school graduation. Kevin C. Brown, general counsel; Robin Chandler, policy advisor; and Johnny W. Collett, director, Division of Learning Services, represented the department.

In response to a question by Senator Givens, Ms. Chandler stated that students were required to take a math course each year of high school, including three specific courses and an elective in math. Students who completed all high school graduation requirements early could graduate in three years.

Mr. Collett stated that there had been confusion about the certificate of attainment's effect on the drop-out numbers. A student who received a certificate of attainment was not technically a drop-out but was not counted as a graduate as that category only included those students who completed the requirements leading to a regular diploma fully aligned to the state's standards. Each student's means of exit is reported. Mr. Brown stated that the federal No Child Left Behind law established requirements on how to count alternative assessments with the high school graduation rate.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to clarify that a student is required to take three specified math courses and a fourth class in mathematics that counts as an elective. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 5:001. Rules of procedure. Jeff Derouen, executive director; Stephanie Bell, deputy executive director; Daniel Hinton, public utility rate analyst; Allyson Honaker, staff attorney; Brent

Kirtley, branch manager; and Gerald Wuetcher, executive advisor, represented the commission.

Co-Chair Bowen stated that he appreciated the commission's process in formulating these administrative regulations, which included working with stakeholders and meeting with utilities to resolve potential conflicts.

In response to a question by Senator Givens, Mr. Derouen stated that maintaining the integrity of data was important, and that technical upgrades were still needed in order to achieve the commission's goal of paperless record-keeping. It was projected to take another six years before the commission fully implemented electronic filing by all utilities in Kentucky since the transition was occurring in stages. The largest utilities converted to electronic filing initially. Other utilities may request permission to file electronically by submitting one copy on paper along with the electronic submission. As the transitions occur, the commission will amend the administrative regulations to enable to next stage of the transition process.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph 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 Section 1 to add definitions previously defined in the body of this administrative regulation to this section; (4) to amend Sections 1 through 20 and 22 to comply with the drafting and formatting requirements of KRS Chapter 13A; (5) to amend Section 8(4) to establish provisions for submission of electronic audio or video files to the commission; (6) to amend Section 13(3)(e) to clarify provisions regarding confidential material; and (7) to update material incorporated by reference commensurate with forms currently in use. Without objection, and with agreement of the agency, the amendments were approved.

807 KAR 5:006. General rules.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and the RELATES TO and STATUTORY AUTHORITY paragraphs to make technical corrections for consistency among administrative regulations; (2) to amend the RELATES TO paragraph to add statutory citations; (3) 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; (4) to amend Sections 1 through 29 to comply with the drafting and formatting requirements of KRS Chapter 13A; (5) to amend Section 29 to include forms the commission is using that were inadvertently not previously incorporated by reference; and (6) to amend Sections 7 and 26 to clarify provisions regarding the frequency of meter inspections and the records required to be kept regarding inspections. Without objection, and with agreement of the agency, the amendments were approved.

807 KAR 5:011. Tariffs.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Sections 1 through 4 and 6 through 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 7, 9 through 13, and 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.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Elevator Safety

815 KAR 4:030. Elevator contractor licensing requirements. Dawn Bellis, general counsel; Ann Ramser, staff attorney; and William Swope, state fire marshal, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to re-insert experience requirements which had been deleted in error; and (2) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 4:040. Elevator mechanic licensing requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 4:060. Requirements for approval of continuing education courses and providers.

Fire Protection, Sprinkler Contractors, and Inspectors

815 KAR 22:010. Requirements for approval of continuing education courses and providers.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 5, and 6 to clarify provisions; and (2) to amend Sections 1, 2, and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:030. Certificate of need expenditure minimums. Chandra Venettozzi, health data administrator, and Diona Mullins, policy advisor, represented the office.

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

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 8, 11, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid 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. Stuart Owen, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend Sections 2 and 5 to correct two typographical errors. Without objection, and with agreement of the agency, the amendments were approved.

Department for Aging and Independent Living: Division of Quality Living: Aging Services

910 KAR 1:260. Kentucky Family Caregiver Program. Phyllis Sosa, assistant director, and Morallia Tran, program coordinator, represented the department.

Representative Lee stated that he was glad the $1,500 cap for reimbursement was removed for a family member caring for five or more children. The rate is now $500 per child. He also stated that it would be beneficial to provide a computer for each child, whether the school stated there was a need or not, as children without in-home computer access did not have equal opportunity to achieve in school.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 7, 8, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments

were approved.

The following administrative regulations were deferred to the December 17, 2012, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:020 & E. Examination.
201 KAR 2:030 & E. License transfer.
201 KAR 2:050 & E. Licenses and permits; fees.
201 KAR 2:061 & E. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints.
201 KAR 2:205 & E. Pharmacist-in-charge.

Board of Optometric Examiners: Board

201 KAR 5:010 & E. Application for licensure; endorsement.
201 KAR 5:030 & E. Annual courses of study required.
201 KAR 5:130 & E. Controlled substances.

Board of Dentistry: Board

201 KAR 8:520. Fees and fines.
201 KAR 8:532 & E. Licensure of dentists.
201 KAR 8:540 & E. Dental practices and prescription writing.

Board of Medical Licensure: Board

201 KAR 9:081 & E. Disciplinary proceedings.
201 KAR 9:200 & E. National Practitioner Data Bank reports.
201 KAR 9:210 & E. Criminal background checks required for all new applicants.
201 KAR 9:230 & E. Required registration in the KASPER system; legal requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement.
201 KAR 9:240 & E. Emergency orders and hearings; appeals and other proceedings.
201 KAR 9:310 & E. Continuing medical education.

Board of Nursing: Board

201 KAR 20:056 & E. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization.
201 KAR 20:161 & E. Investigation and disposition of complaints.
201 KAR 20:215 & E. Continuing competency requirements.

Board of Podiatry: Board

201 KAR 25:011 & E. Approved schools; examination application; fees.
201 KAR 25:021 & E. Annual renewal of licenses, fees.
201 KAR 25:031 & E. Continuing education.
201 KAR 25:051 & E. Procedure for complaints and hearings involving licensees: temporary suspension.
201 KAR 25:090 & E. Prescribing and dispensing controlled substances.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:055. Scope and applicability of the KPDES Program. Peter Goodmann, assistant director, represented the department.

In response to a question by Senator Pendleton, Mr. Goodmann stated that these administrative regulations applied to industrial waste products, not to post-storm or other naturally-produced waste, and did not have new impacts on quarries, concrete, asphalt, or other industries and the holding structures built to contain waste products.

In response to questions by Senator Pendleton and Co-Chair Bell, Mr. Goodmann stated that the state had discretion relating to permit requirements, issuance, and enforcement, even though federal requirements also needed to be met in Kentucky.

A motion was made and seconded to request deferral of consideration of this administrative regulation and 401 KAR 5:060 to the December 17 Subcommittee meeting. Mr. Goodmann stated that the department agreed to the deferral request. Without objection, and with agreement of the agency, this administrative regulation and 401 KAR 5:060 were deferred.

401 KAR 5:060. KPDES application requirements.

Department for Natural Resources: Division of Technical and Administrative Support: General Administrative Procedures

418 KAR 1:010. Definitions for 418 KAR Chapter 1.
418 KAR 1:031. Repeal of 418 KAR 1:030.
418 KAR 1:040. Grant applications.
418 KAR 1:070. Remedies.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Mental Health and Mental Retardation Services: Division of Administration and Financial Management: Institutional Care

908 KAR 3:050. Per diem rates. Jeff Jagnow, regulation coordinator; Ray Peters, program administrator, and Kevin Mudd, director, represented the department.

In response to a question by Representative Lee, Mr. Mudd stated that the annual adjustments made by this administrative regulation were based on each institution's annual cost reports.

Co-Chair Bell stated that the top three facilities charged a per diem of $1,430, $1,370, and $1,345, averaging $1,400 as the cost per day among the top three facilities. Neither Medicare or Medicaid would cover the full cost per diem at the facilities. He stated that more should be done to help patients remain at home, thereby saving money for the state and the families involved, and that Medicare and Medicaid funds should be more directed to home-based care than facility-based care.

In response to questions by Co-Chair Bell, Mr. Mudd stated that the department requested the increases at seven facilities based on the costs at those facilities. Even though facilities had been working to transition patients to other placements, each facility still had fixed costs that did not fluctuate based on population changes at the facility and many of the remaining residents required higher medical care. As the department worked to reduce placements at each facility, the facility's resources were also transitioning to better help the communities. He stated that he did not know the exact costs at each facility. However, since the cost of services and procedures increased annually, increases in reimbursement rates were also an annual necessity.

In response to a question by Senator Pendleton, Mr. Jagnow stated that it cost much more for a facility to provide care than was covered by Medicare or Medicaid reimbursement. He stated that it would be difficult to provide overall estimates of costs since different facilities offer different services at varying rates.

In response to questions by Senator Givens, Mr. Mudd stated that there was not currently a plan in place to consolidate facilities as the patient populations declined. Overall, the facilities have not uniformly declined since the Oakwood facility has moved out more patients than the other facilities. The goal was to move all patients now in facilities into communities and to offer clinic-like services at the facilities once patients have been transitioned to other placements. The Cabinet for Health and Family Services and the Governor oversaw the department.

Representative Lee stated that for an ICFMR the quoted price was all-inclusive, including the patient's room and board, food, and medical treatment. Estimates for the cost of care at home were hard to obtain because the family would be responsible for the costs currently included in the all-inclusive facility rate. Currently, a patient's costs were covered by Social Security plus $35 a day. He stated that it would be worthwhile to discuss bringing a private facility into Medicare and Medicaid eligibility since this would cover all services and be less costly for the state.

Senator Givens stated that he wanted to know information regarding each facility's census, the total amount of money needed to operate each facility, the per diem rate charged by the facility, the actual amount paid by Medicaid, private health insurance, or others on a per diem basis at each facility, the plan for consolidation and closure (or transition) at each facility, and the Supports for Community Living money and population numbers statewide and regionally. He wanted the information for each item to cover fiscal years 2009 through 2012 and the projections for 2013. Mr. Mudd stated that the department would provide the requested information to the Subcommittee for its December meeting.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to request deferral of consideration of this administrative regulation as amended to the December 17 Subcommittee meeting. Mr. Mudd stated that the department agreed to the deferral request. Without objection, and with agreement of the agency, this administrative regulation as amended was deferred.

Department for Community Based Services: Division of Child Care: Day Care

922 KAR 2:090. Child-care center licensure.
922 KAR 2:100. Certification of family child-care homes.
922 KAR 2:110. Child-care center provider requirements.
922 KAR 2:190. Civil penalties.

The Subcommittee adjourned at 2:52 p.m. until December 17, 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 HEALTH AND WELFARE
Meeting of November 9, 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 November 9, 2012, having been referred to the Committee on November 7, 2012, pursuant to KRS 13A.290(6):

900 KAR 6:060
900 KAR 6:085
900 KAR 6:090
900 KAR 6:130
910 KAR 1:240

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 9, 2012 meeting, which are hereby incorporated by reference.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

NONE

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

NONE

The following administrative regulations were deferred pursuant to KRS 13A.300:

NONE

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of November 19, 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 November 19, 2012, having been referred to the Committee on November 7, 2012, pursuant to KRS 13A.290(6):

16 KAR 3:010
16 KAR 6:030

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 November 19, 2012 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

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CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates F - 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 F - 9

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 F - 16

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 F - 17

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.

VOLUME 38

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.

SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
**** Emergency expired after 180 days
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

Regulation Number	38 Ky.R. Page No.	Effective Date
103 KAR 31:170E	1934	5-11-12
Replaced		(See 39 Ky.R.)
405 KAR 10:011E*(r)*	1935	5-4-12
Expired		10-31-12
405 KAR 10:015E	1937	5-4-12
Replaced		(See 39 Ky.R.)
921 KAR 2:015E	1429	12-29-11
Replaced	1969	6-20-12

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	38 Ky.R. Page No.	Effective Date
11 KAR 3:100		
Amended	1977	(See 39 Ky.R.)
101 KAR 2:102		
Amended	1171	7-6-12
101 KAR 2:140		
Amended	1176	
As Amended	1944	7-6-12
101 KAR 3:015		
Amended	1178	7-6-12
103 KAR 8:010		
Amended	73	
As Amended	1297	
Withdrawn		10-31-12
103 KAR 31:170	2107	(See 39 Ky.R.)
106 KAR 2:030	2108	(See 39 Ky.R.)
201 KAR 8:562		
Amended	1870	(See 39 Ky.R.)
201 KAR 13:040		
Amended	1875	(See 39 Ky.R.)
201 KAR 18:220		
Amended	1991	8-31-12
201 KAR 20:450		
Amended	1994	(See 39 Ky.R.)
201 KAR 20:490		
Amended	1764	
As Amended	1945	6-20-12
201 KAR 20:510		
Amended	1997	8-15-12
201 KAR 23:015		
Amended	1767	
As Amended	1947	6-20-12
201 KAR 30:050		
Amended	1768	
As Amended	1947	7-6-12
201 KAR 32:035		
Amended	1877	(See 39 Ky.R.)
202 KAR 7:601		
Amended	1770	(See 39 Ky.R.)
301 KAR 1:201		
Amended	1783	6-7-12
301 KAR 1:410		
Amended	1788	
Amended	1974	(See 39 Ky.R.)
301 KAR 2:041		
Amended	1879	(See 39 Ky.R.)
301 KAR 2:049		
Amended	1883	(See 39 Ky.R.)
301 KAR 2:081		
Amended	1887	(See 39 Ky.R.)
301 KAR 2:082		
Amended	1893	(See 39 Ky.R.)
301 KAR 2:084		
Amended	1898	(See 39 Ky.R.)
301 KAR 2:300		
Amended	1899	(See 39 Ky.R.)
301 KAR 3:022		
Amended	1903	(See 39 Ky.R.)
301 KAR 2:251		
Amended	1661	
As Amended	1948	6-7-12
304 KAR 1:040		
Amended	2002	(See 39 Ky.R.)
304 KAR 1:080	2110	(See 39 Ky.R.)
405 KAR 10:015	2111	(See 39 Ky.R.)
405 KAR 10:030		
Amended	2004	(See 39 Ky.R.)
405 KAR 16:020		
Amended	2007	(See 39 Ky.R.)
501 KAR 6:020		
Amended	1905	(See 39 Ky.R.)
501 KAR 6:050		
Amended	2011	(See 39 Ky.R.)
501 KAR 6:090		
Repealed	1808	7-6-12
501 KAR 6:091*(r)*	1808	7-6-12
501 KAR 6:110		
Amended	2013	8-31-12
501 KAR 6:200		
Amended	1791	
As Amended	1951	7-6-12
501 KAR 6:240		
Amended	1793	
As Amended	1953	7-6-12
501 KAR 6:260	1916	(See 39 Ky.R.)
501 KAR 6:280	1918	(See 39 Ky.R.)
503 KAR 1:110		
Amended	1795	
As Amended	1953	7-6-12
503 KAR 3:070		
Amended	1665	
As Amended	1956	7-6-12
601 KAR 1:018		
Amended	1487	
As Amended	1957	7-6-12
601 KAR 1:019	1399	
As Amended	1962	7-6-12
702 KAR 1:160		
Amended	1799	(See 39 Ky.R.)
703 KAR 5:002*(r)*	1401	(See 39 Ky.R.)
703 KAR 5:070		
Amended	1907	(See 39 Ky.R.)
703 KAR 5:140		
Amended	1391	(See 39 Ky.R.)
703 KAR 5:220	707	
703 KAR 5:225	1919	(See 39 Ky.R.)
703 KAR 5:240	1407	(See 39 Ky.R.)
704 KAR 3:340		
Amended	1909	(See 39 Ky.R.)
704 KAR 5:070	1410	(See 39 Ky.R.)

Regulation Number	39 Ky.R. Page No.	Effective Date
803 KAR 2:300		
Amended	2016	8-31-12
803 KAR 2:307		
Amended	2018	8-31-12
803 KAR 2:309		
Amended	2021	8-31-12
803 KAR 2:313		
Amended	2023	(See 39 Ky.R.)
803 KAR 2:316		
Amended	2025	8-31-12
803 KAR 2:317		
Amended	2027	8-31-12
803 KAR 2:319		
Amended	2029	8-31-12
803 KAR 2:320		
Amended	2031	(See 39 Ky.R.)
803 KAR 2:403		
Amended	2037	8-31-12
803 KAR 2:405		
Amended	2040	(See 39 Ky.R.)
803 KAR 2:407		
Amended	2042	(See 39 Ky.R.)
803 KAR 2:425		
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
811 KAR 1:090		
Amended	2068	(See 39 Ky.R.)
811 KAR 1:093	2118	8-30-12
811 KAR 1:095		
Amended	2077	(See 39 Ky.R.)
811 KAR 2:093	2119	8-31-12
811 KAR 2:096		
Amended	2084	(See 39 Ky.R.)
811 KAR 2:100		
Amended	2093	(See 39 Ky.R.)
815 KAR 6:010		
Amended	1498	
Amended	1866	
As Amended	1966	7-6-12
815 KAR 6:070	1521	
As Amended	1968	
Withdrawn		6-8-12
815 KAR 20:100		
Amended	2099	8-31-12
900 KAR 7:030		
Amended	2102	8-31-12
900 KAR 9:010	2121	(See 39 Ky.R.)
921 KAR 2:015		
Amended	1501	
As Amended	1969	6-20-12
921 KAR 3:035		
Amended	1804	6-20-12

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

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101 KAR 2:210	729	9-14-12
103 KAR 3:060E	942	9-27-12
103 KAR 5:220	730	9-4-12
103 KAR 31:170E		(See 38 Ky.R.)
Replaced	458	10-5-12
105 KAR 1:400E	4	5-30-12
Replaced	750	10-24-12
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 5:010E	388	7-20-12
201 KAR 5:030E	390	7-20-12
201 KAR 5:130E	392	7-20-12
201 KAR 8:532E	394	7-20-12
201 KAR 8:540E	398	7-25-12
201 KAR 9:001E	401	7-20-12
201 KAR 9:081E	402	7-20-12
201 KAR 9:200E	406	7-20-12
201 KAR 9:210E	408	7-20-12
201 KAR 9:220E	409	7-20-12
201 KAR 9:230E	410	7-20-12
201 KAR 9:240E	411	7-20-12
201 KAR 9:250E	414	7-20-12
201 KAR 9:260E	418	7-20-12
201 KAR 9:310E	423	7-20-12
201 KAR 20:056E	426	7-20-12
201 KAR 20:057E	429	7-20-12
201 KAR 20:161E	431	7-20-12
201 KAR 20:215E	434	7-20-12
201 KAR 25:011E	436	7-20-12
201 KAR 25:021E	438	7-20-12
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SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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156.670	701 KAR 5:110
157	922 KAR 2:090
157.390	16 KAR 2:120
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157.655	701 KAR 5:110
157.660	701 KAR 5:110
157.665	701 KAR 5:110
158.290	702 KAR 3:130
158.444	704 KAR 7:160
158.645	703 KAR 5:225
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160.160	701 KAR 5:110
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161.028	16 KAR 2:120
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161.030	16 KAR 2:120
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161.560	702 KAR 3:130
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164.947	13 KAR 1:020
164.992	13 KAR 1:020
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183.865	602 KAR 50:030
183.867	602 KAR 50:030
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183.868	602 KAR 50:030
183.870	602 KAR 50:030
186	922 KAR 2:120
186.018	601 KAR 13:110
186.020	922 KAR 2:100
186.410	601 KAR 13:110
186.535	601 KAR 13:110
186.570	921 KAR 1:410
186.574	601 KAR 13:110
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198B.660	815 KAR 8:060
198B.664	815 KAR 8:060
198B.672	815 KAR 8:060
198B.684	815 KAR 8:060
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199.895	922 KAR 2:090
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199.896	922 KAR 2:090
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199.897	922 KAR 2:100
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199.898	922 KAR 2:090
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227.320	815 KAR 10:060
227.330	815 KAR 10:060
227.480	815 KAR 35:020
227.487	815 KAR 35:020
227.491	815 KAR 35:020
227.990	815 KAR 10:060
227A.010	815 KAR 35:060
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278.010	807 KAR 5:011
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278.020	807 KAR 5:001
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278.160	807 KAR 5:011
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278.170	807 KAR 5:011
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281A.160	502 KAR 10:120
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309.359	201 KAR 42:035
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309.361	201 KAR 42:040
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309.363	201 KAR 42:080
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310.041	201 KAR 45:030
311.420	201 KAR 25:011
311.450	201 KAR 25:021
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311A.020	202 KAR 7:530
311A.030	202 KAR 7:520
311A.035	202 KAR 7:530
311A.045	202 KAR 7:530
311A.055	202 KAR 7:520
311A.060	202 KAR 7:520
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311A.110	202 KAR 7:601
311A.115	202 KAR 7:601
311A.120	202 KAR 7:601
311A.130	202 KAR 7:601
311A.155	202 KAR 7:520
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311A.190	202 KAR 7:530
313.010	201 KAR 8:532
313.022	201 KAR 8:520
313.030	201 KAR 8:520
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313.035	201 KAR 8:532
313.060	201 KAR 8:540
313.080	201 KAR 8:532
313.085	201 KAR 8:540
313.100	201 KAR 8:520
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314.142	201 KAR 20:411
314.161	201 KAR 20:056
314.193	201 KAR 20:057
314.470	201 KAR 20:056
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315.010	201 KAR 2:040
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315.060	201 KAR 2:050
315.050	201 KAR 2:020
315.110	201 KAR 2:050
315.120	201 KAR 2:050
315.131	201 KAR 2:061
315.191	201 KAR 2:040
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315.210	201 KAR 2:030
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315.335	201 KAR 2:205
315.402	201 KAR 2:050
315.512	201 KAR 2:350
315.514	201 KAR 2:350
315.518	201 KAR 2:050
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315.520	201 KAR 2:050
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315.0351	201 KAR 2:050
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318.010	815 KAR 20:020
318.015	815 KAR 20:020
318.054	815 KAR 20:034
318.130	815 KAR 20:020
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318.150	815 KAR 20:020
318.160	815 KAR 20:191
318.200	815 KAR 20:020
319B.010	201 KAR 44:090
319B.030	201 KAR 44:090
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319B.040	201 KAR 44:400
319B.130	201 KAR 44:110
319C.050	201 KAR 43:050
319C.060	201 KAR 43:050
320.220	201 KAR 5:010
320.250	201 KAR 5:010
320.270	201 KAR 5:010
320.280	201 KAR 5:030
322.060	201 KAR 18:040
322.090	201 KAR 18:040
322.100	201 KAR 18:040
322.110	201 KAR 18:040
322.120	201 KAR 18:040
322.160	201 KAR 18:040
322.170	201 KAR 18:040
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324A.030	201 KAR 30:030
324A.035	201 KAR 30:030
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324A.040	201 KAR 30:030
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324A.045	201 KAR 30:125
324A.052	201 KAR 30:030
327.010	201 KAR 22:001
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327.040	201 KAR 22:053
327.050	201 KAR 22:040
327.070	201 KAR 22:040
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334A.035	16 KAR 2:120
334A.050	16 KAR 2:120
334A.060	16 KAR 2:120
334A.170	201 KAR 17:090
334A.200	201 KAR 17:110
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350.300	405 KAR 5:032
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403.160	921 KAR 1:400
403.210-403.240	921 KAR 1:001
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403.211	921 KAR 1:380
403.211-403.215	921 KAR 1:410
405.060	921 KAR 1:410
405.405-405.991	921 KAR 1:410
405.430	921 KAR 1:380
	921 KAR 1:400
405.440	921 KAR 1:001
	921 KAR 1:400
405.467	921 KAR 1:380
405.520	921 KAR 1:001
	921 KAR 1:380
405.991	921 KAR 1:400
406.021	921 KAR 1:380
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406.025	921 KAR 1:380
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407.5101-407.5902	921 KAR 1:001
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415.174	907 KAR 3:170
415.184	907 KAR 3:170
421.500-421-550	201 KAR 20:411
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424.260	702 KAR 3:130
427.120	921 KAR 1:410
427.125	921 KAR 1:410
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433.902	830 KAR 1:010
434.840-434.860	907 KAR 3:170
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440.50	907 KAR 3:170
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447.272	907 KAR 1:155
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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.

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